

**PROJECT AGREEMENT  
(Redacted Version)**

**TO DESIGN, BUILD AND FINANCE  
HIGHWAY 3 WIDENING PROJECT – ESSEX TO LEAMINGTON**

**CONFIDENTIAL**

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**SCHEDULES**

<b>Schedule No.</b>	<b>Description</b>
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Letters of Credit
Schedule 8	- <b>INTENTIONALLY DELETED</b>
Schedule 9	- Key Individuals
Schedule 10	- Review Procedures
Schedule 11	- Quality Management
Schedule 12	- Works Schedule Requirements
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning and Completion Requirements
Schedule 15	- Output Specifications
Schedule 16	- Title Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communications
Schedule 19	- Payment Procedures
Schedule 20	- Lands
Schedule 21	- Construction Period Failures
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination
Schedule 24	- <b>[REDACTED]</b>
Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Refinancing
Schedule 29	- Form of Performance Guarantee of Construction Guarantor
Schedule 30	- Insurance Trust Agreement
Schedule 31	- Project Co Information
Schedule 32	- <b>INTENTIONALLY DELETED</b>
Schedule 33	- Works Report Requirements
Schedule 34	- <b>INTENTIONALLY DELETED</b>
Schedule 35	- <b>INTENTIONALLY DELETED</b>
Schedule 36	- Contractor Site Specific Safety Manual Requirements

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THIS PROJECT AGREEMENT is entered into as of the 18<sup>th</sup> day of May, 2023

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**, as represented by the Minister of Transportation

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**, as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

(hereinafter referred to as “**Contracting Authority**”)

**AND:**

**GIP HWY 3 INC., [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. Contracting Authority wishes to procure the design, construction and financing of the Expansion Infrastructure, being the 15.6 km widening of Highway 3 from 1.2 km east of Essex Road 23 in the Town of Essex to 1.1 km east of Essex Road 34 in the Municipality of Leamington.
- B. Contracting Authority commenced the procurement process for the Project, as hereinafter defined, by issuance of a Request for Qualifications for the Project on June 10, 2021.
- C. Project Co will carry out the Works, which Works include the design, construction and financing of the Expansion Infrastructure (the “**Project**”).
- D. Contracting Authority and Project Co wish to enter into this project agreement (the “**Project Agreement**”) which sets out the terms and conditions upon which Project Co shall perform the Works.
- E. The Project will proceed as a public-private partnership project and complies with the principles set out in MOI’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector (the “**IPFP Framework**”).
- F. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
  - 1. The public interest is paramount.
  - 2. Value for money must be demonstrable.

3. Appropriate public control/ownership must be preserved.
  4. Accountability must be maintained.
  5. All processes must be fair, transparent and efficient.
- G. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- H. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that 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 Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

<b>Schedule No.</b>	<b>Description</b>
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Letters of Credit
Schedule 8	- <b>INTENTIONALLY DELETED</b>
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Quality Management
Schedule 12	- Works Schedule Requirements
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning and Completion Requirements
Schedule 15	- Output Specifications
Schedule 16	- Title Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communications



Schedule 19	-	Payment Procedures
Schedule 20	-	Lands
Schedule 21	-	Construction Period Failures
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	<b>[REDACTED]</b>
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Form of Performance Guarantee of Construction Guarantor
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	<b>INTENTIONALLY DELETED</b>
Schedule 33	-	Works Report Requirements
Schedule 34	-	<b>INTENTIONALLY DELETED</b>
Schedule 35	-	<b>INTENTIONALLY DELETED</b>
Schedule 36	-	Contractor Site Specific Safety Manual Requirements

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

**1.2 Conflict of Terms**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 – Definitions and Interpretation;
  - (v) Schedule 27 – Dispute Resolution Procedure;
  - (vi) Schedule 19 – Payment Procedures;
  - (vii) Schedule 21 – Construction Period Failures;
  - (viii) Schedule 15 – Output Specifications;
  - (ix) Schedule 17 – Environmental obligations;
  - (x) Schedule 25 – Insurance and Performance Security Requirements;
  - (xi) Schedule 22 – Variation Procedure;
  - (xii) Schedule 10 – Review Procedure;
  - (xiii) Schedule 14 – Outline Commissioning and Completion Requirements;
  - (xiv) Schedule 11 –Quality Management;
  - (xv) Schedule 29 – Refinancing;
  - (xvi) Schedule 23 – Compensation on Termination;
  - (xvii) Schedule 26 – Record Provisions;
  - (xviii) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xix) Schedule 13 – Project Co Proposal Extracts.

- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or Contracting Authority, upon discovery of same, shall immediately give Notice to the Contracting Authority Representative. The Contracting Authority Representative shall, within 10 Business Days after such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to Project Co.
- (d) Contracting Authority and Project Co shall comply with the determination of the Contracting Authority Representative pursuant to this Section 1.2 unless Contracting Authority or Project Co 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 ambiguities, conflicts or inconsistencies between this Project Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of Contracting Authority set out in the Lenders' Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.

### 1.4 Legal Requirements

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

## 2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

### 2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.14 to 4.20, 5 to 15, 16.5, 17 to 23, 25 to 30, and 40 to 53 and Schedules 1, 2, 9 to 13, 16, 18, 22, and 24 to 27 of this Project Agreement will come into effect on the date of this Project Agreement (“**Commercial Close**”). All other provisions and schedules will come into effect only on Financial Close.

### 2.2 Standby Letter of Credit

- (a) **INTENTIONALLY DELETED**

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

### **2.3 Financial Close**

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

- (b) If Contracting Authority fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 1 of Schedule 2 – Completion Documents and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written Notice having immediate effect.
- (c) Project Co shall deliver to Contracting Authority each of the items referred to in Section 3 of Schedule 2 – Completion Documents by the applicable date set out in such Section.

#### 2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, Contracting Authority may in its sole discretion either:
- (i) terminate this Project Agreement in its entirety by written Notice having immediate effect; or
  - (ii) direct Project Co to assign to Contracting Authority and Contracting Authority will assume:
    - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
    - (B) those contracts between Project Co and any Project Co Party which Contracting Authority elects to be assigned.
- (c) If Contracting Authority exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Proposal Fee pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED]% of such fee. Contracting Authority's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to Contracting Authority, that such fee represents full and final satisfaction of any obligation or liability of Contracting Authority, IO and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals process.

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### 3. GUARANTEED PRICE

#### 3.1 Guaranteed Price and Adjustments

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST is \$[REDACTED] and is equal to the sum of the Cost of the Works and the Cost of the Financing. The Cost of the Works and the Cost of the Financing are as set out in the Financial Model.
- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once, on or within the 2 Business Days immediately prior to Financial Close, on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the Financial Submission Deadline.
- (c) The Parties:
- (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and
  - (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date set out in Section 3.1(b).
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure.

#### 3.2 Intentionally Deleted.

### 4. PAYMENT

#### 4.1 General

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

- (b) Details of Payment Procedures are set out in Schedule 19 – Payment Procedures.

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

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

#### **4.3 Lump Sum Payments**

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

#### **4.4 Directions of Payments**

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

satisfied. Project Co acknowledges and agrees that payment by Contracting Authority of the Substantial Completion Payment to the Lenders' Agent in accordance with this Section 4.4(a) constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under section 7 of the *Construction Act* pursuant to section 10 of the *Construction Act*.

#### **4.5 Payment of Legislative Holdback**

- (a) Payment of Legislative Holdback shall be made in accordance with Schedule 19 – Payment Procedures.

#### **4.6 Payment of Finishing Holdback**

- (a) Payment of Finishing Holdback shall be made in accordance with Schedule 19 – Payment Procedures.

#### **4.7 Payment of Completion Holdback**

- (a) Completion Holdback shall be paid in accordance with Schedule 19 – Payment Procedures.

#### **4.8 Compensation on Termination**

- (a) If this Project Agreement is terminated pursuant to Sections 35.3(a), 36.2(a)(ii), 37.1, 37.2 or 37.3, then:
- (i) Schedule 23 - Compensation on Termination shall apply and Contracting Authority shall pay Project Co any applicable compensation on termination; and
  - (ii) the provisions of Sections 4.3 through 4.7, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs Contracting Authority to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct. Contracting Authority shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. Contracting Authority will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. Project Co acknowledges and agrees that payment by Contracting Authority of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.8 constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under section 7 of the *Construction Act* pursuant to section 10 of the *Construction Act*.



**4.9 Payment Due under Insurance Policies**

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

**4.10 HST**

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

**4.11 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) Contracting Authority to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement (other than any Milestone Payments), any amounts (including, without limitation, any amounts payable in accordance with Article 45 or any amounts payable as liquidated damages pursuant to Section 46.5) that,
    - (A) are due to Contracting Authority by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to the Performance Guarantee of the Construction Guarantor; or
    - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (ii) Project Co to set off against any amounts otherwise due to Contracting Authority pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Article 45) that,
    - (A) are due to Project Co by Contracting Authority pursuant to the terms of this Project Agreement; or
    - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure.
- (b) Where a set-off, deduction or withholding is being exercised against amounts payable under a Proper Invoice, Contracting Authority shall deliver a notice of non-payment in

the prescribed form and manner, no later than 14 days after receiving the Proper Invoice.

#### 4.12 Effect of Payment

- (a) Subject to Section 39.2, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

#### 4.13 No Other Entitlement

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

#### 4.14 Taxes

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies. If Contracting Authority is required by Applicable Law to collect any such HST from Project Co, Project Co shall pay such HST to Contracting Authority simultaneously with the amount of consideration to which such applicable HST relates or applies.
- (b) Contracting Authority shall pay when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Lands or the Expansion Infrastructure.
- (c) **INTENTIONALLY DELETED**
- (d) 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.
- (e) If the Canada Revenue Agency, or the Parties, acting reasonably, determine that Section 182 of the *Excise Tax Act* (Canada) applies to a payment made by either Contracting Authority or Project Co: (i) the payor of such 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; 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.

**4.15 Changes in Scope of Taxation**

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

**4.16 Changes in Recoverability of Tax Credits**

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

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

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

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

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

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

#### 4.19 Taxes – General

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

#### 4.20 Taxes – Indemnity

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

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

#### **4.21 Construction Period Deductions**

- (a) Project Co shall comply with the provisions of Schedule 21 – Construction Period Failures to this Project Agreement. Project Co acknowledges that the Substantial Completion Payment is subject to Construction Period Deductions in accordance with Schedule 21 - Construction Period Failures to this Project Agreement.

#### **4.22 Intentionally Deleted**

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

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

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

#### **5.2 Early Works Agreement**

- (a) The Parties acknowledge and agree that the Early Works Agreement terminated effective as of Financial Close and that this Project Agreement supersedes the Early Works Agreement in its entirety. All activities undertaken pursuant to the Early Works Agreement prior to Financial Close are deemed to have been undertaken by Project Co as Works pursuant to this Project Agreement, notwithstanding that the Early Works may have been executed by [REDACTED] (the "**Early Works Contractor**") and not directly by Project Co. Project Co accepts and assumes the risk, responsibility and

liability for and in respect of such Early Works in accordance with the provisions of this Project Agreement.

- (b) Subject to Section 5.2(c), neither Project Co nor the Early Works Contractor nor Contracting Authority or any other party to the Early Works Agreement shall be entitled to make a claim against each other or against any Project Co Party or any Contracting Authority Party under or in connection with the Early Works Agreement (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments.
- (c) Where an event or circumstance occurred during the term of the Early Works Agreement (an “**Early Works Event**”) and such Early Works Event would constitute a Delay Event or Compensation Event or entitle Project Co to a Variation pursuant to this Project Agreement had the Early Works Event occurred during the Project Term, such Early Works Event shall subject to and in accordance with Article 31, be treated as a Delay Event and, subject to and in accordance with Article 32, be treated as a Compensation Event or subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (d) Any dispute in connection with or arising out of the Early Works Agreement and existing at Financial Close shall, unless otherwise agreed in writing by the Parties, be resolved in accordance with Schedule 27 - Dispute Resolution Procedure.

## 6. REPRESENTATIONS AND WARRANTIES

### 6.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of the date of this Project Agreement:
  - (i) Project Co is [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 Project Agreement and to perform its obligations hereunder;
  - (ii) To the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project;
  - (iii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of highway projects similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
  - (iv) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings

- and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (v) 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 its obligations under this Project Agreement;
  - (vi) this Project Agreement has been duly authorized, executed, and delivered on behalf of Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co 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;
  - (vii) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
    - (A) its constating, formation or organizational documents, including any by-laws;
    - (B) any Applicable Law; or
    - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
  - (viii) no Project Co Event of Default has occurred and is continuing;
  - (ix) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
  - (x) 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 Project Co's ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any

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

- (xi) Project Co has reviewed the Background Information as set out in Section 7 and conducted the investigations in respect of the Lands as set out in Section 16 and, without affecting anything in Section 7, Section 16 and Section 18, has conducted its own additional investigations (other than in respect of the Background Information and the Lands) and has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xii) Project Co is able to meet its obligations as they generally become due;
- (xiii) Project Co is registered under Subdivision d of Division V of Part IX of the *Excise Tax Act (Canada)* and its account number is [REDACTED];
- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xv) Project Co is not a Non-Resident;
- (xvi) Project Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (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 and certain of the Project Co Parties have conducted inspections of the Lands (as set out in Section 16) and an investigation and examination of the Project Agreement, the Background Information (as set out in Section 7) and any other documents made available to Project Co by Contracting Authority so as to ascertain the nature or location of the Works, the protocols, rules and regulations if any applicable to the Works, possible delays in commencing the Works, conditions relating to the transportation, handling and storage of



materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works; and

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

## 6.2 Contracting Authority Representations and Warranties

- (a) Contracting Authority represents and warrants to Project Co that as of Commercial Close:
- (i) IO is a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province;
  - (ii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for the Province that are required by this Project Agreement to be executed and delivered by the Province;
  - (iii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), Contracting Authority has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are

- required by this Project Agreement to be done, executed, delivered or performed;
- (iv) Contracting Authority has obtained all necessary approvals to enter into this Project Agreement as agent for the Province;
  - (v) this Project Agreement has been duly authorized, executed, and delivered by Contracting Authority and constitutes a legal, valid, and binding obligation of Contracting Authority, enforceable against Contracting Authority in accordance with its terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
    - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
    - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
    - (D) Section 11.3 of the *Financial Administration Act (Ontario)*;
    - (E) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act (Ontario)*; and
    - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act (Ontario)*;
  - (vi) the execution, delivery, and performance by Contracting Authority of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
    - (A) the *Ontario Infrastructure and Lands Corporation Act, 2011 (Ontario)*, as amended, or any regulations made in respect thereof;
    - (B) the *Executive Council Act (Ontario)*;
    - (C) any Applicable Law; or
    - (D) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected;

- (vii) no Contracting Authority Event of Default has occurred and is continuing;
- (viii) Contracting Authority is able to meet its obligations as they generally become due;
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against Contracting Authority or, to Contracting Authority's knowledge, any Contracting Authority Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which Contracting Authority has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Contracting Authority or in any impairment of its ability to perform its obligations under this Project Agreement, and Contracting Authority 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) Contracting Authority has, or will have, rights of use and access to, on and over the Lands and the Existing Expansion Infrastructure or has the requisite power to obtain such rights that are sufficient to enable Contracting Authority to grant or to cause to be granted to Project Co the licence rights contemplated in Section 16; and
- (xi) Contracting Authority is the registered owner of, and has, or will have, at all relevant times, good title in fee simple to, the Owned Lands.

## 7. BACKGROUND INFORMATION

### 7.1 Review of Background Information

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

**7.2 No Warranty for Background Information**

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

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

- (a) Except as expressly provided in Sections 7.4, 18.2, 18.3, 18.4 and 18.5, none of Contracting Authority, any Province Person, or any Government Entity shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not claim for, or seek to recover from Contracting Authority, any Province Person, or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise, including any claim for extensions of time or for additional payments under this Project Agreement) from:
- (i) the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party;
  - (ii) any claim that the Background Information was incorrect, inaccurate, incomplete, insufficient or unfit for purpose;
  - (iii) any misunderstanding or misapprehension in respect of the use of the Background Information by Project Co or any Project Co Party; or
  - (iv) any failure (whether before, on, or after the execution and delivery of this Project Agreement) by Contracting Authority, any Province Person or Government Entity to:
    - (A) disclose or make available to Project Co or any Project Co Party any information, documents or data; or
    - (B) review or update the Background Information.

**7.4 Exceptions**

- (a) Contracting Authority agrees that if, at the date of this Project Agreement, except as described in any Background Information or as otherwise expressly disclosed by Contracting Authority or any Province Person or known by Project Co or any Project Co Party, any of the information in the Technical Reports is incorrect or there is relevant information in the possession or control of Contracting Authority that would

- make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Work or materially adversely affects Project Co's cost of performing the Work, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) Sections 7.2 and 7.3 are not intended to and shall not prohibit Project Co from relying upon information that has been provided by a person who has given Project Co an express written entitlement to rely on that information, provided however, except as set out in Sections 7.4, 18.2, 18.3, 18.4 and 18.5, 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 information provided by that person. For clarity, except as set out in to Sections 7.4, 18.2, 18.3, 18.4 and 18.5, Project Co's legal recourse with respect to the information provided by the person who provided the express written entitlement to rely on the information shall be against that person and not Contracting Authority or any Province Person.

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

### **8.2 Ancillary Documents**

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 26.3, 48.3 and 49.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
  - (ii) make or agree to any amendment, restatement or other modification to any Ancillary Document that materially adversely affects Project Co's ability to

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

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

without the prior written consent of Contracting Authority, provided that, where consent is requested pursuant to Section 8.2(a)(i) or 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 8.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of Contracting Authority, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 48.3.

- (b) 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(ies) of any notice(s) delivered or received by Project Co under any of the Ancillary Documents.

### **8.3 Changes to Lending Agreements and Refinancing**

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

### **8.4 Compliance with Lending Agreements**

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

prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

## **9. CONTRACTING AUTHORITY RESPONSIBILITIES**

### **9.1 General**

- (a) Contracting Authority shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law; and
  - (ii) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that Contracting Authority shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) Contracting Authority shall, and shall cause all Contracting Authority Parties to take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Contracting Authority or any Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude Contracting Authority (or any designate appointed pursuant to Section 52.1 of this Project Agreement) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of Contracting Authority (or any designate appointed pursuant to Section 52.1 of this Project Agreement) from time to time, subject to Section 30.1(c).

### **9.2 Contracting Authority Permits, Licences, Approvals and Agreements**

- (a) Contracting Authority shall, at its own cost and risk:
- (i) obtain on or before Financial Close (or such other date as set forth in Appendix A – Contracting Authority Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation), maintain, and, as applicable, renew all Contracting Authority Permits, Licences, Approvals and Agreements which may be required for the performance of the Works; and
  - (ii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Contracting Authority shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as Contracting Authority may reasonably be able to provide, and shall execute such

applications or documents as are required to be in its name, to enable Project Co 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 Contracting Authority shall not be responsible for obtaining, or for any delay in obtaining, or for the failure of Project Co to obtain, any Project Co Permit, Licence, Approval and Agreement, unless such delay or failure is (i) caused by any act or omission of Contracting Authority or any Contracting Authority Party or (ii) is otherwise provided for in this Project Agreement including in Appendix A – Contracting Authority Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation. For greater certainty, 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; or
  - (ii) 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 for such Project Co Permits, Licences, Approvals and Agreements.
- (c) Notwithstanding the provisions of Section 11.8(a)(i), Contracting Authority shall be responsible for all designations, assumptions, road closures, transfers and any other applicable requirements relating to the Expansion Infrastructure which can only be effected by Contracting Authority pursuant to the *Public Transportation and Highway Improvement Act (Ontario)* or the *Highway Traffic Act (Ontario)*, provided that Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and technical or administrative assistance as Contracting Authority may request and as Project Co may reasonably be able to provide to enable Contracting Authority to effect such requirements.

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

### **10.1 Other Business**

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

### **10.2 Complete and Operational Expansion Infrastructure**

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



**10.3 General Responsibilities and Standards**

- (a) Project Co shall, at its own cost and risk, perform and complete the Works:
- (i) in accordance with the Baseline Works Schedule and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement,
    - (A) achieve Substantial Completion by the Scheduled Substantial Completion Date; and
    - (B) achieve Final Completion by the Scheduled Final Completion Date;
  - (ii) in compliance with Applicable Law;
  - (iii) so as to satisfy the Output Specifications;
  - (iv) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
  - (v) in accordance with Good Industry Practice;
  - (vi) in a manner consistent with Quality Plans and Project Co Proposal Extracts;
  - (vii) in a timely and professional manner;
  - (viii) with due regard to the health and safety of persons and property;
  - (ix) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of Contracting Authority, any Province Person or any Government Entity to comply with Applicable Law;
  - (x) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Contracting Authority Activities; and
  - (xi) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall cooperate with Contracting Authority in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of Contracting Authority's obligations under this Project Agreement.

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**11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION****11.1 Development of Design**

- (a) Project Co shall, at its own cost, develop and complete the design of the Expansion Infrastructure and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 11.1.
- (b) The further development of the design of the Expansion Infrastructure and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the Expansion Infrastructure, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 - Environmental Obligations) and the Contracting Authority Representative and the Contracting Authority Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any Expansion Infrastructure or a change in the Works, then such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (d) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale and format required by the Contracting Authority Design Team) for each of the following:
  - (i) design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering, environmental and landscape design information sufficient to allow for the development of working drawings, submitted at:
    - (A) 50% completion (the “**Pre-final Design Development Submittals**”); and
    - (B) 90% completion (the “**Final Design Development Submittals**”),(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, environmental and

landscape design information in accordance with the requirements of this Project Agreement, submitted at:

- (A) 100% completion (the “**Construction Document Submittals**”);
  - (iii) Permit, Licence, Approval and Agreement drawings (phased, in conjunction with or to support the Design Development Submittals or the Construction Document Submittals, as applicable); and
  - (iv) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (e) Project Co shall submit to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(d).
- (f) The Design Data and other items listed in Section 11.1(d) must contain, at a minimum, the following additional information:
- (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all design or construction drawings, all interim or final reports, all supporting Project Co Permits, Licences, Approvals and Agreement documents, and any other specifications or documents necessary to enable the Contracting Authority Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;
  - (iii) for each stage of the design or construction documentation, a schedule in a format acceptable to the Contracting Authority identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation and for all reports or plans, a blacklined version shall be required to show revisions between the current and previous submission; and
  - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (g) All design review meetings held by Project Co which Contracting Authority wishes to attend shall be held in person at the MTO Regional Office at 659 Exeter Road, London, Ontario, except where otherwise agreed by the Parties, acting reasonably.
- (h) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Expansion Infrastructure prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo,

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- remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (i) Neither Contracting Authority nor any Contracting Authority Party will have any liability:
    - (i) if a document submitted by Project Co and reviewed by Contracting Authority, the Contracting Authority Representative or the Contracting Authority Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
    - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
  - (j) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
  - (k) Project Co shall allow the Contracting Authority 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 as soon as practicable following receipt of a written request from the Contracting Authority Representative.

## 11.2 Start-Up Meeting

- (a) Within 10 Business Days of the date of this Project Agreement, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Contracting Authority to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
  - (i) Project Co’s plan to develop a successful partnership with Contracting Authority for the purpose of supporting Contracting Authority in achieving its vision, mission and core values;
  - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
  - (iii) Project Co’s process to ensure optimum design quality;
  - (iv) Project Co’s approach to ensure that all Project Co Parties perform the Works, as applicable, as a fully integrated team;
  - (v) a proposed schedule of Works Submittals which is consistent with the Proposed Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow sufficient time for review of each Works Submittal by the Contracting

Authority Design Team, taking into account both the resources available to the Contracting Authority Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Baseline Works Schedule;

- (vi) Project Co's plan and timeline to successfully conduct consultations and integrate feedback from consultations with Stakeholders and the Contracting Authority Design Team;
- (vii) Project Co's approach to timing, construction, adjustment and user feedback on required mock-ups; and
- (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation.

### 11.3 Design Review Meetings

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold design review meetings (the "**Design Review Meetings**") upon the following terms:
  - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the Contracting Authority Representative;
  - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and shall incorporate such schedule into the Draft Baseline Works Schedule;
  - (iii) Project Co shall circulate to the Contracting Authority Representative an agenda for each of the Design Review Meetings no later than 10 Business Days prior to the relevant Design Review Meeting and all drawings and meeting material no later than 7 Business Days prior to the relevant Design Review Meeting, unless otherwise agreed by the Contracting Authority Representative;
  - (iv) the Design Review Meetings shall be held in person at the MTO Regional Office at 659 Exeter Road, London, Ontario, except where otherwise agreed by the Parties, acting reasonably;
  - (v) in advance of a Design Review Meeting, Project Co may submit to the Contracting Authority Design Team interim drafts of designs or plans required under this Project Agreement, which submissions shall be used to inform Contracting Authority on the development of the Expansion Infrastructure design and provide an opportunity for dialog on compliance with the requirements of this Project Agreement. If a Proposal Part corresponds to the interim submissions, then Project Co shall ensure that the interim submissions

are substantially the same content and level of detail as the corresponding Proposal Part. For greater certainty,

- (A) interim submissions shall be informal, shall not be reviewed in accordance with Schedule 10 - Review Procedure;
  - (B) the requirement for Project Co to submit interim submissions that are substantially the same content and level of detail as the corresponding Proposal Part, shall not,
    - (I) lessen, reduce or otherwise modify or amend Contracting Authority's rights under the Project Agreement to review any Design Development Submittals in accordance with Schedule 10 – Review Procedure; or
    - (II) constitute acceptance by the Contracting Authority of the corresponding Proposal Part or any Design Development Submittal in accordance with Schedule 10 – Review Procedure.
  - (vi) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within five Business Days after each Design Workshop, Project Co shall provide to the Contracting Authority Representative 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;
  - (vii) If the Contracting Authority Representative has comments on the minutes of a Design Review Meeting, Project Co shall address and incorporate such comments within two Business Days after such comments were made;
  - (viii) Contracting Authority and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that Contracting Authority shall not be bound by the input provided in connection with the Design Review Meetings;
  - (ix) Project Co shall submit to Contracting Authority the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure and Schedule 12 – Works Schedule Requirements; and
  - (x) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be as prescribed in Schedule 10 - Review Procedure.
- (b) Following Project Co's submission of each of the Pre-final Design Development Submittals, the Final Design Development Submittals and the Construction Document Submittals, the Parties shall hold Design Review Meetings with respect to the matters related to the applicable Design Development Submittals or Construction Document

Submittals, and any other Design Review Meetings required by Project Co or Contracting Authority, acting reasonably.

- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of 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.

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

- (a) In the design and engineering of the Project, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, Output Specifications and codes, and as otherwise required by Applicable Law.
- (c) Project Co shall ensure that the Design Team certifies that the design and construction of the Expansion Infrastructure is in accordance with the requirements of this Project Agreement as contemplated pursuant to Appendix A of Schedule 10 - Review Procedure. During construction and commissioning of the Expansion Infrastructure, the Design Team shall review Shop Drawings, inspect the Works and review the reports, test results, certificates, confirmations, opinions and inspections prepared by other persons in connection with or relating to the construction and commissioning of the Expansion Infrastructure, all to the extent necessary to satisfy the Design Team that the Works have been performed in compliance with this Project Agreement.
- (d) Project Co shall ensure that the Design Team has, and has assigned, sufficient resources necessary to satisfy the construction monitoring activities and frequency of certification required by the Design Team as contemplated pursuant to Schedule 10 - Review Procedure.

#### **11.5 Works Submittals**

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

**11.6 Documents at the Site**

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

**11.7 General Construction Obligations**

- (a) Without limiting Section 10.3:
  - (i) Project Co is solely responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Expansion Infrastructure, and all other performance of the Works.
  - (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
    - (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 - Quality Management;
    - (B) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
    - (C) protect the Works from all of the elements, casualty and damage;
    - (D) in respect of plant, equipment, Products and materials incorporated in the Works, use plant, equipment, Products and materials that:
      - (I) are of a kind that are consistent with the Output Specifications;
      - (II) unless otherwise allowed under Schedule 15-2 - Design and Construction, are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and



Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and

- (III) where they differ from the Output Specifications, have been substituted with Contracting Authority's prior written consent in accordance with Section 11.19.
- (iii) Without limiting Project Co's obligations pursuant to Section 11.11 or Project Co's indemnity pursuant to Section 45.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Lands to prevent access onto the Site of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 16 shall include rights for Project Co to do so.
- (b) No later than 90 days after Financial Close, Project Co shall provide a new construction site office for use by the Contracting Authority, at the location(s) specified in Schedule 15 – Output Specifications, and in accordance with the requirements set out in Schedule 15 – Output Specifications.

## 11.8 Permits, Licences, Approvals and Agreements

- (a) Project Co shall, at its own cost and risk:
  - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
  - (ii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
  - (iii) provide the Contracting Authority with a copy of all Project Co Permits, Licences, Approvals and Agreements.
- (b) Where 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 Permit, Licence, Approval and Agreement. Contracting Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Contracting Authority or any Province Person by the requirements of any Project Co Permit, Licence, Approval and Agreement obtained with Contracting Authority consent under this Section 11.8(b).
- (c) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Contracting Authority may request

- and as Project Co may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Contracting Authority to obtain, maintain or renew any Contracting Authority Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of Contracting Authority to obtain any Contracting Authority Permit, Licence, Approval and Agreement, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.
- (d) In the event that Contracting Authority agrees or elects, in its sole discretion, to become a party to, or be bound by a Project Co Permit, Licence, Approval and Agreement following a written request in this regard being made by Project Co to Contracting Authority, then with respect to such Project Co Permit, Licence, Approval and Agreement, the Parties covenant and agree as follows:
- (i) Contracting Authority covenants and agrees to provide to Project Co a copy of such Project Co Permit, Licence, Approval and Agreement within 30 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 Permit, Licence, Approval and Agreement as if Project Co was an original party thereto in place and stead of Contracting Authority;
    - (B) to pay any amounts paid, payable, or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permit, Licence, Approval and Agreement; 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, in respect of or in connection with such Project Co Permit, Licence, Approval and Agreement;
  - (iii) Project Co acknowledges and agrees that any amount paid by Contracting Authority under, pursuant to, in respect of or in connection with such Project Co Permit, Licence, Approval and Agreement shall constitute, and shall be deemed to constitute, a debt of an equivalent amount immediately due and payable by Project Co to Contracting Authority pursuant to the terms of this Project Agreement, and Contracting Authority shall be entitled to exercise its rights under Section 4.11 to seek payment of such debt due and payable to Contracting Authority by Project Co; and
  - (iv) Project Co acknowledges and agrees that Contracting Authority's agreement or election to become a party to, or be bound by such Project Co Permit,

Licence, Approval and Agreement shall not, and shall not be deemed, construed or interpreted to:

- (A) be an agreement by Contracting Authority that such Project Co Permit, Licence, Approval and Agreement is, becomes or constitutes a Contracting Authority Permit, Licence, Approval and Agreement;
  - (B) be a waiver by Contracting Authority of full compliance with, or a waiver by Contracting Authority of any breach of, any of the provisions of this Project Agreement;
  - (C) be any form of forbearance of or to Contracting Authority's right to seek or enforce strict compliance with any of the provisions of this Project Agreement, or the exercise by Contracting Authority of any right, power or remedy that may be available to Contracting Authority under this Project Agreement; and
  - (D) restrict, limit, prejudice or in any other way impair the rights and/or remedies of Contracting Authority under this Project Agreement;
- (e) In the event that a Utility Company elects not to enter into a Utility Agreement with Project Co (such Utility Company being hereinafter referred to as a “**Non-participating Utility**”), then the Parties covenant and agree as follows:
- (i) Project Co:
    - (A) may provide a written Notice to Contracting Authority:
      - (I) confirming to Contracting Authority that the Non-participating Utility has elected not to enter into a Utility Agreement with or for the benefit of Project Co;
      - (II) setting forth to Contracting Authority sufficient details as to the steps taken by Project Co to have the Non-participating Utility enter into a Utility Agreement with or for the benefit of Project Co, such sufficient details to include:
        - (i) a detailed description of the information and material submitted to the Non-participating Utility to enable it to consider entering into a Utility Agreement with or for the benefit of Project Co, together with a copy of all such information and material;
        - (ii) a detailed description of the response of the Non-participating Utility to the request(s) of Project Co to have the Non-participating Utility enter into a Utility Agreement with or for the benefit of

Project Co, such description to include those areas where an agreement was or can be reached, and the details of the reasons as to why (or Project Co's belief as to why) Project Co is unable to reach agreement with the Non-participating Utility, together with a copy of all written material received from such Non-participating Utility; and

- (iii) any other information that Contracting Authority considers relevant or necessary,
  - (B) may request that Contracting Authority use commercially reasonable efforts to obtain, enter into or obtain the benefit of such Utility Agreement with the Non-participating Utility; and
  - (C) shall arrange, attend and participate in all meetings with Contracting Authority and the subject Non-participating Utility regarding such Utility Agreement, as may be requested by Contracting Authority.
- (ii) Upon Contracting Authority receiving written Notice from Project Co pursuant to Sections 11.8(e)(i)(A) and 11.8(e)(i)(B), and Contracting Authority being satisfied that Project Co has used commercially reasonable efforts to enter into or to obtain the benefit of the subject Utility Agreement with the Non-participating Utility, Contracting Authority shall use commercially reasonable efforts to cause the Province to enter into or receive the benefit of such Utility Agreement with such Non-participating Utility.
- (iii) In the event that the Province enters into a Utility (Province) Agreement, Contracting Authority covenants and agrees to provide to Project Co a copy of such Utility (Province) Agreement within 15 Business Days of Contracting Authority's receipt of same.
- (iv) In the event that the Province becomes a party to, becomes bound by or receives the benefit of a Utility (Province) Agreement following a written request being made by Project Co to Contracting Authority pursuant to Section 11.8(e)(i)(B), then with respect to such Utility (Province) Agreement, Project Co agrees to and in favour of Contracting Authority:
- (A) perform and fulfil the liabilities and obligations (including indemnity obligations) of the Province under such Utility (Province) Agreement as if Project Co were an original party thereto in place and stead of the Province;
  - (B) pay any amounts paid, payable, or owing by the Province arising under, pursuant to, in respect of or in connection with such Utility (Province) Agreement; and

- (C) perform, satisfy, discharge and fulfil all obligations (including indemnity obligations), liabilities and indebtedness of or owing by the Province arising under, pursuant, in respect of or in connection with such Utility (Province) Agreement.
- (v) Project Co acknowledges and agrees that any amount paid by the Province under, pursuant to, in respect of or in connection with such Utility (Province) Agreement shall constitute, and shall be deemed to constitute, a debt of an equivalent amount immediately due and payable by Project Co to Contracting Authority pursuant to the terms of this Project Agreement, and Contracting Authority shall be entitled to exercise its rights under Section 4.11 to seek payment of such debt due and payable to Contracting Authority by Project Co.
- (vi) Project Co acknowledges and agrees that the Province's agreement to become a party to, or be bound by such Utility (Province) Agreement shall not, and shall not be deemed, construed or interpreted to:
  - (A) be an agreement by Contracting Authority that such Utility (Province) Agreement is, becomes or constitutes a Contracting Authority Permit, License and Approval;
  - (B) be a waiver by Contracting Authority of full compliance with, or a waiver by Contracting Authority of any breach of, any of the provisions of this Project Agreement;
  - (C) be any form of forbearance of or to Contracting Authority's right to seek or enforce strict compliance with any of the provisions of this Project Agreement, or the exercise by Contracting Authority of any right, power or remedy that may be available to Contracting Authority under this Project Agreement; or
  - (D) restrict, limit, prejudice or in any other way impair the rights and/or remedies of Contracting Authority under this Project Agreement.

## 11.9 Protection of Work and Property

- (a) Project Co shall protect the Works, including the Expansion Infrastructure and the property of Contracting Authority on the Lands, including the Existing Expansion Infrastructure, and the property adjacent to the Site from damage or destruction which may arise as a result of Project Co's operations under this Project Agreement, and Project Co shall be responsible for such damage or destruction, except for any damage or destruction which occurs as a result of acts or omissions by Contracting Authority or any Contracting Authority Party.
- (b) Unless this Project Agreement is terminated in accordance with its terms, if all or any part of:

- (i) the Works, including the Expansion Infrastructure prior to the Substantial Completion Date;
- (ii) the Works, including the Expansion Infrastructure following the Substantial Completion Date as the result of an act or omission of Project Co or any Project Co Party;
- (iii) any property of Contracting Authority on or adjacent to the Lands, including any Existing Expansion Infrastructure on or adjacent to the Lands, as a result of an act of omission of Project Co or a Project Co Party; or
- (iv) the property of a third party on or adjacent to the Lands as a result of an act of omission of Project Co or a Project Co Party;

is damaged or destroyed at any time during the Project Term, then

- (v) in the case of (i), (ii) and (iii) above, Project Co shall, at its own cost and expense, Make Good such portion of the Works, including the Expansion Infrastructure, the Existing Expansion Infrastructure, and the property of Contracting Authority on or adjacent to the Lands, including the Existing Expansion Infrastructure (the “**CA Reinstatement Work**”) and/or:
  - (vi) in the case of (iv) above, Project Co shall, at its own cost and expense, upon written notice from Contracting Authority, Make Good such property (the “**Third Party Reinstatement Work**”) and together with the CA Reinstatement Work, the “**Reinstatement Works**”).
- (c) Project Co shall carry out any Reinstatement Works promptly and, in any event, as soon as practicable in the circumstances.
  - (d) Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the Works, including the Expansion Infrastructure, shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder (including indemnity obligations) or entitle Project Co to any compensation from Contracting Authority.
  - (e) Project Co shall not undertake to repair and/or replace any damage or destruction whatsoever to adjacent property without first consulting Contracting Authority and receiving written instructions as to the course of action to be followed. Notwithstanding the foregoing, where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, take such emergency action as is necessary to remove the danger.
  - (f) If any of the Reinstatement Works is reasonably estimated to cost more than \$[REDACTED] or in any other case where the Contracting Authority Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the Contracting Authority Representative acting

reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Works 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 Works required to restore, replace and reinstate the damage or destruction;
- (ii) Project Co’s proposed schedule for the execution of the Reinstatement Works; and
- (iii) the information required pursuant to Schedule 22 – Variation Procedure as if such plan were an Estimate;

and the Reinstatement Works 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.

- (g) Project Co shall cause the Reinstatement Works to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure. All designs, plans and specifications in respect of the Reinstatement Works 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 Works shall, as a condition to their retainer and prior to commencing any Reinstatement Works or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with Contracting Authority in substantially the same forms as the Design and Construction Contract and the Construction Contractor’s Direct Agreement.
- (h) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 - Insurance Trust Agreement are available to carry out the Reinstatement Works, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be

dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Works.

- (i) If any Project Co Party has caused damage or destruction to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.12(e) 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(e) and Schedule 27 – Dispute Resolution Procedure.

#### 11.10 Liability Unaffected

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

#### 11.11 Safety

- (a) Project Co shall until the Substantial Completion Date, and following the Substantial Completion Date, solely in relation to the Works:
  - (i) comply with the Contractor Site Specific Safety Manual;
  - (ii) keep the Site in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site and in the immediate vicinity of the Site;
  - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site of any persons or creatures not entitled to be there;
  - (iv) comply, and cause each Project Co Party to comply, with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act (Ontario)* and all regulations thereto;
  - (v) identify the COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, with the greatest degree of control over the Works' health and safety matters, and cause



- said Project Co Party to perform, all of the obligations of the “constructor”, and indemnify Contracting Authority, each Province Person and each Government Entity against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act (Ontario)* and all regulations thereto;
- (vi) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every 90 days; and
  - (vii) facilitate and provide cooperation with respect to any inquiry or investigation of the MOLTSD with respect to the Project.
- (b) Project Co shall ensure the COR-Certified Construction Project Co Party or COR-Qualified Construction Project Co Party identified pursuant to Section 11.11(a)(v) above registers the Project with the MOLTSD by way of a Notice of Project, pursuant to Applicable Law. Project Co shall ensure the entity identified pursuant to Section 11.11(a)(v) above shall identify as the constructor on the Notice of Project.
- (c) Project Co shall cause the Construction Contractor to deliver at least one (1) copy of the Contractor Site Specific Safety Manual to the Lands no later than the first Business Day following Financial Close (or such other date as may be agreed by the Parties) and maintain the Contractor Site Specific Safety Manual (as it may be amended by the Construction Contractor from time to time) at the Lands until Final Completion, and following Final Completion, during the performance of the Construction Activities.
- (d) At any time that the Works are being carried out in or around the Existing Expansion Infrastructure the Project Co Party identified in Section 11.11(a)(v) shall at all times:
- (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.11(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 MOLTSD determines, pursuant to the *Occupational Health and Safety Act (Ontario)*, that the Project Co Party identified in Section 11.11(a)(v) 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 Works;
  - (ii) if the activity or presence of Project Co or a Project Co Party on the Site caused, in whole or in part, MOLTSD to determine that the Project Co Party identified in Section 11.11(a)(v) is not the “constructor” for the Site or any portion thereof, all Project Co Parties will immediately take any necessary remedial

action, including vacating the Site to ensure that the MOLTSD determines that the Project Co Party identified in Section 11.11(a)(v) is the “constructor”;

- (iii) if a third party is named “constructor” by MOLTSD, 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 MOLTSD determines that Contracting Authority or a third party contractor has been designated as the “constructor” under the *Occupational Health and Safety Act* (Ontario), and such determination by the MOL is due to an act or omission of any Project Co Party, 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 MOLTSD.
- (f) In the event that an act or omission of the Project Co Party identified in Section 11.11(a)(v) causes or contributes to an MOLTSD determination that the Project Co Party identified in Section 11.11(a)(v) is not the “constructor” for the Site or any portion thereof, or if the Project Co Party identified in Section 11.11(a)(v) or any Project Co Party is denied access to the Site pursuant to Section 11.11(a)(v), Project Co will not be eligible for a Delay Event or a Compensation Event.
- (g) Project Co acknowledges and agrees that, following the Substantial Completion Date, Project Co’s access to, and control of the Site may be subject to the activities of the Contracting Authority, Contracting Authority Parties or Other Contractors, and that Project Co may be required to undertake all or a portion of the Works under circumstances where a person other than the Project Co Party identified in Section 11.11(a)(v) is the “constructor” for all or a portion of the Site. Following the Substantial Completion Date, Project Co shall:
- (i) provide Contracting Authority with at least 15 Business Days advance Notice of its intention to undertake Construction Activities on the Site, providing reasonable particulars;
  - (ii) participate with Contracting Authority and any party fulfilling the role of “constructor” in reviewing and coordinating construction schedules, when requested to do so by Contracting Authority;
  - (iii) coordinate its access to the Site with Contracting Authority and any party fulfilling the role of “constructor” in respect of all or a portion of the Site; and
  - (iv) comply with the instructions of any party that is fulfilling the role of “constructor” under the *Occupational Health and Safety Act* (Ontario) relating to matters of health and safety, methods and manner of construction (where

applicable), and coordination and scheduling of the Works. Project Co shall not interfere with, and shall not do anything whatsoever that causes the “constructor” to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario).

- (h) Project Co shall comply with Schedule 36 – Constructor Site Specific Safety Manual Requirements.

#### 11.12 Additional Works

- (a) Contracting Authority reserves the right to carry out Additional Works. Contracting Authority may assign to Project Co responsibility for:

- (i) directing the methods and means of construction of the Additional Works;
- (ii) coordinating and scheduling the Additional Works; and/or
- (iii) providing safety training in respect of the Additional Works.

- (b) In connection with the Additional Works, Contracting Authority shall:

- (i) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), cause Additional Contractors to comply with the instructions of Project Co relating to the methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works;
- (ii) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site and the Lands;
- (iii) enter into separate contracts with Additional Contractors containing terms and provisions which (A) are consistent with the terms and provisions of this Project Agreement (including Schedule 27 – Dispute Resolution Procedure), (B) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), require Additional Contractors to comply with all directions of Project Co in respect of any matter regarding methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works and (C) require Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site and the Lands;
- (iv) ensure that insurance coverage is provided in respect of the Additional Works as would be required by a prudent owner similarly situated and that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works to provide seamless insurance coverage to Project Co and Contracting Authority (including, if appropriate, naming Contracting Authority

and Project Co as additional insureds and/or loss payees) and, in any event, such insurance shall provide for commercial general liability insurance of not less than \$[REDACTED]; and

- (v) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall:
- (i) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), and subject to the performance by Contracting Authority of its obligations under Sections 11.12(b)(i) and 11.12(b)(iii), direct the methods and means of construction of the Additional Works, coordinate and schedule the Additional Works with the Works to be performed under this Project Agreement, as applicable, and provide safety training in respect of the Additional Works;
  - (ii) subject to the performance by Contracting Authority of its obligations under Section 11.12(b)(i) and 11.12(b)(iii), in respect of the Expansion Infrastructure, assume overall responsibility for compliance by the Additional Contractors and Additional Works with all aspects of Applicable Law relating to health and safety at the Site and the Lands, including all the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act (Ontario)* in accordance with such Act prior to Substantial Completion and, at the request of Contracting Authority exercised in a manner consistent with the said Act, at any time that Project Co is acting as a ‘constructor’ on the Site or the Lands following Substantial Completion;
  - (iii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
  - (iv) participate with Contracting Authority and Additional Contractors in reviewing their construction schedules when directed to do so by Contracting Authority; and
  - (v) where all or part of the performance of the Works is affected by, or depends upon, the completion and/or proper execution of the Additional Works, promptly, and prior to proceeding with the affected Works, report to Contracting Authority in writing 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.
- (d) If, in respect of Additional Works carried out on the Lands prior to Substantial Completion:
- (i) any Additional Contractors cause any damage to the Works;

- (ii) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), Project Co incurs any additional costs or there is any delay in the Works as a result of any Additional Contractors not complying with the reasonable instructions of Project Co regarding methods and means of construction, coordination and scheduling or safety; or
- (iii) Project Co incurs any additional costs or there is any delay in the Works as a result of any such Additional Works,

then, provided such delay in the Works or additional costs are not as a result of Project Co's failure to perform any of its obligations under Section 11.12(c) or any act or omission of Project Co or a Project Co Party, any such delay in the Works or additional costs in respect of the Works shall, subject to and in accordance with Article 31, be treated as a Delay Event and, subject to and in accordance with Article 32, be treated as a Compensation Event.

- (e) 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 the Additional Contractors are subject to binding reciprocal obligations 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 binding reciprocal agreement to arbitrate.
- (f) In connection with the Additional Works, Project Co may propose 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 propose a Variation if such Additional Works are:
    - (A) reasonably expected to void a warranty in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, or
    - (B) reasonably expected to have a material adverse effect on Project Co's ability to perform any of the Works, including a material delay in the Works or material additional costs in respect of the Works;
  - (ii) if Project Co has proposed a Variation in accordance with Section 11.12(f)(i), Contracting Authority shall, within 10 Business Days of such proposal, either issue a Variation Enquiry or give Notice to Project Co that it does not agree that a Variation is required;

- (iii) either Party may refer the question of whether a Variation is required pursuant to Section 11.12(f)(i) for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iv) where Contracting Authority has, under Section 11.12(f)(ii), given Notice to Project Co that it does not agree that a Variation is required, Contracting Authority shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) 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 (as contemplated in Section 11.12(f)(i)) and will not result in any material negative effect (including material additional costs) on Project Co’s ability to perform any of the Works and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
  - (B) the Parties shall, without prejudice to their respective obligations under this Project Agreement, use commercially reasonable efforts to mitigate any adverse effects of such Additional Works, including, with respect to any void or voidable warranty and any increase in costs arising therefrom.
- (g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent Project Co is entitled to a Delay Event or Compensation Event in accordance with Section 11.12(d) or as expressly described in any Variation Confirmation.

### 11.13 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, Contracting Authority shall not be responsible for the presence of persons participating in a Protest Action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Site or the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Site or the 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 Lands pursuant to Section 16 nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co prior to Substantial Completion and of Contracting Authority following Substantial Completion in respect of the Site and/or the Lands (including Existing Expansion

Infrastructure on the Site) and New Expansion Infrastructure, to the extent such management is not otherwise the responsibility of the Police Service .

- (c) If at any time prior to Substantial Completion, Protesters or Trespassers occupy the Site, Lands or infrastructure referred to in Section 11.13(b), or access to such Site, Lands 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 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 (at the cost of Project Co) to remove Protesters or Trespassers from the Site, Lands 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 (at the cost of Project Co) to the extent it is, in the discretion of Contracting Authority, reasonable and appropriate in the circumstances to do so.
- (e) If Project Co experiences a Protest Action on the Site or the Lands, or access by Project Co to the Site or the Lands and is prevented or materially interfered with by a Protest Action, then:
- (i) the Protest Action shall, subject to and in accordance with Section 31, be treated as a Delay Event provided that Project Co has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a court of first instance and to enforce such injunction or other remedy granted by such court to remove Protesters and Trespassers in such Protest Action from the Site (including Existing Expansion Infrastructure on the Site), and New Expansion Infrastructure, provided that Project Co shall not be obligated to pursue injunctive or other judicial remedies beyond the court of first instance with respect to such removal of Protesters and Trespassers; and
  - (ii) Project Co shall be entitled to a Variation in respect of the Direct Costs incurred by Project Co in connection with such Protest Action, subject to and in accordance with Schedule 22 – Variation Procedure, excluding the first \$[REDACTED] of all Direct Costs incurred by Project Co cumulatively in connection with all Protest Actions throughout the Project Term which would have been payable to Project Co in accordance with this Section 11.13(e)(ii),  
  
except to the extent that any delay or Direct Costs incurred by Project Co were caused, or contributed to, by a breach of this Project Agreement by Project Co or any Project Co Party.
- (f) For the purposes of calculating the first \$[REDACTED] of Direct Costs pursuant to Section 11.13(e)(ii) such amount shall not include any amount or amounts which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

#### 11.14 Defective Works

Prior to Substantial Completion:

- (a) Project Co shall promptly Make Good any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement, or any deficiency, defect or error in relation to any Product (collectively, a “**Construction Defect**”) whether or not such Construction Defect has been incorporated into the Expansion Infrastructure and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of Project Co. The correction of Construction Defects shall be at Project Co’s



- sole cost and expense. Project Co shall Make Good, in a manner acceptable to the Independent Certifier, all Construction Defects, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Baseline Works Schedule, 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.
- (b) Project Co shall Make Good promptly other contractors' work destroyed or damaged by such rectifications at Project Co's expense.
  - (c) If in the opinion of the Independent Certifier it is not expedient for Project Co to correct any Construction Defects, Contracting Authority may deduct from the amount of the Guaranteed Price the difference in value between the Works as performed and that called for by the Project Agreement. If Contracting Authority and Project Co do not agree on the difference in value, they shall refer the matter to the Independent Certifier for a determination and the determination will be issued as a Variation.

### 11.15 Warranty Obligations

- (a) Project Co represents, warrants and covenants that:
  - (i) the Works shall conform to the requirements of this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
  - (ii) the Works shall be free of defects, including design defects, errors and omissions; and
  - (iii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) During the Warranty Period and subject to Section 11.15(c), Project Co shall promptly, at its sole cost and expense, correct and Make Good all Construction Defects arising in respect of the Works. For greater certainty, Project Co is required to correct and Make Good Construction Defects related to any Product during the applicable Warranty Period despite Project Co having obtained on Contracting Authority's behalf industry-standard or other equipment warranties in accordance with Section 11.15(f). For all work to correct Construction Defects, the applicable Warranty Period shall be extended for a further two years from the date of the last work completed in respect of such corrective Works. For clarity, any extension of a Warranty Period for the purposes of a correction shall only apply to the relevant Construction Defect and not the Works as a whole.
- (c) In addition to the obligation to correct and Make Good Construction Defects during the Warranty Period, Project Co shall at its expense correct and Make Good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the

- Works (“**Construction Latent Defect**”), provided Contracting Authority gives Project Co written Notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act*, 2002 (Ontario).
- (d) The warranties described in this Section 11.15 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any Product or item of equipment called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such Product or equipment.
- (e) If Project Co fails to correct and Make Good any Construction Defects or Construction Latent Defects in accordance with Sections 11.15(b) and 11.15(c) and in the time period specified in Section 11.16(a) or Section 11.16(b), as applicable, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority may correct such Construction Defects or Construction Latent Defects at Project Co’s sole cost and expense.
- (f) Project Co shall obtain warranties from the manufacturers of each of the Products for the duration(s) and in accordance with the applicable requirements specified in the Output Specifications in the name of and to the benefit of both Project Co and Contracting Authority. Where, in respect of a Product warranty, the Output Specifications do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and Contracting Authority which shall extend no less than two years from the Substantial Completion Date. Each Product warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to the Substantial Completion Date. Project Co shall ensure that each Product warranty, including any Product warranty extended under this Section 11.15(f), is fully assigned to Contracting Authority, at no cost or expense to Contracting Authority, at the end of the Warranty Period, as such Warranty Period may be extended in accordance with Section 11.15(b).
- (g) **Intentionally Deleted.**
- (h) Subject to Section 11.12, Project Co acknowledges that Contracting Authority may, in its sole discretion, maintain, repair and/or alter any part or parts of the Works during the applicable Warranty Period and agrees that such work shall not impact any of the warranties provided by Project Co hereunder, provided that such work is carried out in accordance with Good Industry Practice and that such work does not materially alter the affected part or parts of the Works.

### 11.16 Prompt Repair of Warranty Work

- (a) Project Co acknowledges that the timely performance of warranty work is critical to the ability of Contracting Authority to maintain effective operations of Expansion Infrastructure. Project Co shall use commercially reasonable efforts to respond to any requirement by Contracting Authority to correct Construction Defects and

- Construction Latent Defects within the time periods required by Contracting Authority (which, for certainty, may, in respect of an Emergency, require immediate response or correction). Project Co further acknowledges that if Contracting Authority is unable to contact Project Co and/or the corrective work is not commenced within such time period as may be required by Contracting Authority (including, for clarity, immediately in the event of an Emergency), Contracting Authority's own forces may take such emergency steps as are reasonable and appropriate to correct such Construction Defects and Construction Latent Defects, at Project Co's sole cost and expense and, except in the case of damage caused by Contracting Authority's own forces, such emergency steps taken by Contracting Authority's own forces shall not invalidate any warranties in respect of such portion of the Works affected by such corrective actions of Contracting Authority's own forces.
- (b) Subject to Section 11.16(a), Project Co shall promptly, and in any event not more than 30 days after receipt of written Notice thereof from Contracting Authority, Make Good any Construction Defects which may develop within the Warranty Period and any Construction Latent Defects, and also Make Good any damage to Other Works caused by the correction of such Construction Defects and Construction Latent Defects. All such corrective work shall be at Project Co's sole cost and expense and shall not be treated as, or entitle Project Co to request or form the basis of a claim for, a Variation, additional compensation or damages. The above-noted time period of 30 days shall be subject to the following:
- (i) If the corrective work cannot be completed in the 30 days specified, Project Co shall be in compliance if Project Co:
- (A) commences and is diligently proceeding with the corrective work within the specified time;
  - (B) provides Contracting Authority with a schedule acceptable to Contracting Authority for such correction;
  - (C) reports to Contracting Authority on the status and the progress of the corrective work on an ongoing basis (including on a daily basis if requested by Contracting Authority); and
  - (D) Makes Good the Construction Defects, Construction Latent Defects or damage, as the case may be, or in accordance with such schedule.
- (c) If Project Co fails to correct and Make Good Construction Defects, Construction Latent Defects and/or damages, as the case may be, in the time specified in Section 11.16(a) or Section 11.16(b), as applicable, or subsequently agreed upon, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority may correct such works at the sole risk, cost and expense of Project Co and may draw down on the Warranty Period Security to fund or as reimbursement for such costs and expenses.

- (d) The performance of corrective work and Making Good of Construction Defects, Construction Latent Defects and/or damages, as the case may be, for which Project Co is responsible shall be commenced and completed as expeditiously as possible in accordance with Section 11.16(a) or Section 11.16(b), as applicable, and shall be executed at times convenient to Contracting Authority and this may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete such Work, as directed by Contracting Authority to accommodate the operation of the Expansion Infrastructure or other aspects of the Project as constructed, shall be at Project Co's sole cost and expense.
- (e) The foregoing express warranties shall not deprive Contracting Authority of any action, right or remedy otherwise available to Contracting Authority at law or in equity for breach of any of the provisions of the Project Agreement or any Ancillary Document by Project Co, and the periods referred to in this Section 11.16, shall not be construed as a limitation on the time in which Contracting Authority may pursue such other action, right or remedy.

### 11.17 Warranty Period Security

- (a) Project Co shall either:
- (i) on or before the Substantial Completion Date, deliver, or cause to be delivered, to Contracting Authority, the Warranty Period Letter of Credit; or
  - (ii) no later than five Business Days prior to the Substantial Completion Date, provide written Notice to Contracting Authority of Project Co's intention to not deliver the Warranty Period Letter of Credit, in which case Contracting Authority shall withhold the Warranty Period Cash Amount in accordance with Section 11.17(c).
- (b) The Warranty Period Letter of Credit shall be in an amount equal to [REDACTED] (\$[REDACTED]) (the "**Required Amount**").
- (c) Notwithstanding Section 4.3(a), if:
- (i) the Warranty Period Letter of Credit has not been delivered to Contracting Authority by the Substantial Completion Payment Date, or
  - (ii) Project Co provides written Notice to Contracting Authority pursuant to Section 11.17(a)(ii) that it elects not to deliver the Warranty Period Letter of Credit,
- then Contracting Authority may withhold from the Substantial Completion Payment a holdback amount equal to the Required Amount (the "**Warranty Period Cash Amount**").
- (d) The Warranty Period Cash Amount may be withheld by Contracting Authority until the Warranty Period Security Return Date, and upon the Warranty Period Security

Return Date, the remaining amount of the Warranty Period Cash Amount shall be paid by Contracting Authority to Project Co.

- (e) The withholding of the Warranty Period Cash Amount in accordance with Section 11.17(c) shall be Contracting Authority's sole remedy for failure on the part of Project Co to deliver a Warranty Period Letter of Credit in the Required Amount by the Substantial Completion Payment Date and, for greater certainty, Contracting Authority shall not be entitled to withhold payment of the balance of the Substantial Completion Payment as a result of any such failure on the part of Project Co to deliver a Warranty Period Letter of Credit in the Required Amount.
- (f) Contracting Authority shall be entitled to draw on the Warranty Period Security:
- (i) in an amount equal to the amount of the costs estimated by the Independent Certifier for Contracting Authority to rectify defects, deficiencies or non-compliant items in the Work, together with all other damages suffered by Contracting Authority, including any costs incurred by Contracting Authority in accordance with Sections 11.15 and 11.16 as a result of Project Co's failure to comply with its obligations under Sections 11.15 and 11.16; and/or
  - (ii) to satisfy any amounts that are due and have remained outstanding for 30 days by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 29 – Form of Performance Guarantee of Construction Guarantor.
- (g) Contracting Authority may make multiple calls on the Warranty Period Security.
- (h) In the event that Contracting Authority draws on the Warranty Period Security, Project Co shall forthwith, and in any event within 5 Business Days following such draw;
- (i) provide Contracting Authority with a replacement Warranty Period Letter of Credit if Project Co delivered a Warranty Period Letter of Credit in accordance with 11.17(a); and/or
  - (ii) pay to Contracting Authority an amount if Contracting Authority withheld the Warranty Period Cash Amount in accordance with Section 11.17(c),
- such that the Warranty Period Security is at all times during the period between Substantial Completion and the Warranty Period Security Return Date in the Required Amount. In the event Project Co fails to provide a replacement Warranty Period Letter of Credit or pay to the Contracting Authority an amount required by this Section 11.17(h), as the case may be, Contracting Authority is entitled to deduct from and set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement an amount such that the Warranty Period Security is in the Required Amount.
- (i) Unless the Warranty Period Security is fully drawn by Contracting Authority in accordance with the provisions of this Project Agreement, Contracting Authority shall

release and deliver the Warranty Period Security to Project Co on the Warranty Period Security Return Date.

- (j) In the event that the Warranty Period Letter of Credit has an expiry date that is prior to the Warranty Period Security Return Date, and Project Co does not renew (or does not cause the renewal of) the Warranty Period Letter of Credit and does not provide (or cause the provision of) proof of such renewal to Contracting Authority before the date that is 20 days before the Warranty Period Letter of Credit's expiry date, then at any time during such 20 day period and upon providing prior written Notice to Project Co, Contracting Authority may draw upon the full amount of the Warranty Period Letter of Credit and deposit the cash proceeds thereof in a segregated bank account selected by Project Co at an Acceptable Issuer and if Project Co does not promptly select such bank account, then such bank account may be selected by Contracting Authority in its sole and absolute discretion and such cash proceeds shall thereupon stand in place of the Warranty Period Letter of Credit unless Project Co delivers (or causes the delivery of) a replacement Warranty Period Letter of Credit to Contracting Authority. Contracting Authority shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the Warranty Period Security under Section 11.17(f). Upon the delivery of a replacement Warranty Period Letter of Credit by Project Co to Contracting Authority, all remaining cash proceeds from such segregated bank account shall be returned to Project Co or as Project Co may direct within five Business Days after the delivery of such replacement Warranty Period Letter of Credit by Project Co to Contracting Authority.
- (k) No interest will be payable to either Party in respect of any cash proceeds or Warranty Period Cash Amounts.

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

- (a) Project Co shall perform the Works so as to coordinate with,
- (i) the operations of, and the performance of any services by, Contracting Authority, any Province Person, any Governmental Authority, any Other Contractor, any Utility Company, and any Municipality, including the performance of the Contracting Authority Activities and the Other Works;
  - (ii) the construction of the interface, connection or inter-connection between the New Expansion Infrastructure and the Existing Expansion Infrastructure; and
  - (iii) the performance of the Utility Relocation Works.
- (b) Project Co acknowledges and agrees that,
- (i) Project Co has familiarized itself with all operations and activities associated with the Lands and the Existing Expansion Infrastructure, and will perform the Works in accordance with, and subject to,

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- (A) this Project Agreement, including all rules, requirements and restrictions relating to access as set out in Schedule 15 – Output Specifications; and
  - (B) the requirements of Contracting Authority and other third parties,  
in order to maintain normal operations and activities associated with the Lands and the Existing Expansion Infrastructure;
  - (ii) the carrying on of Contracting Authority Activities during construction is a priority for Contracting Authority, and Project Co has reviewed the Project Documents with respect to this;
  - (iii) Project Co shall use all methods required to comply with the instructions set out in this Project Agreement during the performance of the Works, Project Co shall fully cooperate with Contracting Authority in complying with such instructions during the performance of the Works, and any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price; and
  - (iv) the Project Agreement includes specifications which include instructions respecting Contracting Authority’s use of the Existing Expansion Infrastructure, Project Co has read and understood such instructions and shall comply with the procedures set out therein, and Project Co shall be responsible for any costs and expenses resulting in its failure to comply with these procedures.
- (c) Except as explicitly permitted by Contracting Authority or this Project Agreement, and subject to Project Co’s compliance with all applicable Permits, Licences, Approvals and Agreements,
- (i) Project Co shall minimize disturbance to and interference with,
    - (A) the Existing Expansion Infrastructure in accordance with this Project Agreement, including with respect to noise, dust control, access to the Lands and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Expansion Infrastructure and in respect of those portions of the Works where connections are being made to the Existing Expansion Infrastructure;
    - (B) the construction, operations or maintenance activities of Contracting Authority, any Province Person, any Governmental Authority, any Other Contractor, any Utility Company, any Municipality, and with respect to any road or roadway, including the performance of the Contracting Authority 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 including the

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Existing Expansion Infrastructure, whether under the control or in the possession of Contracting Authority or any other person, and Project Co shall minimize any lane closures or diversions.

- (d) To the extent that the Project necessitates interference, in any way, with the operation of the Existing Expansion Infrastructure, including the imposition of any closures or detours on the Existing Expansion Infrastructure, Project Co shall use commercially reasonable efforts to cooperate with Contracting Authority, Province Persons, Governmental Authorities, Other Contractors, Utility Companies, Municipalities, and other relevant third parties to ensure the continued operation of the Existing Expansion Infrastructure.
- (e) Project Co shall develop and implement protocols in furtherance of its obligations as set out in this Section 11.18 in accordance with the Access Management Plan and the Output Specifications.

#### **11.19 Substitutions**

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

#### **11.20 Change in Standards**

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Expansion Infrastructure, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change. If, after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If Contracting Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 11.20 shall not apply where a change in a technical standard is also a Change in Law.

#### **11.21 Subcontractors and Suppliers**

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



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- (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Project Agreement;
  - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with Project Co Parties; and
  - (iii) be as fully responsible to Contracting Authority for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) **Intentionally Deleted.**
- (c) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Construction Contractor’s Direct Agreement and, subject to Section 11.21(d), to cause the Construction Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Subcontractor’s Direct Agreement, to evidence, among other things, that Contracting Authority shall have the right to cure any default by the Construction Contractor under the Subcontract.
- (d) None of Project Co, the Construction Contractor or the applicable Project Co Party are obliged to enter into a Subcontractor’s Direct Agreement in respect of Subcontracts having a total estimated cost of \$[REDACTED] or less.
- (e) Subject to Section 11.21(d), Project Co agrees to deliver to Contracting Authority the Subcontractor’s Direct Agreements within 15 days of entering into a Subcontract with a Project Co Party. If, following the date that 100% Construction Document Submittals are submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure, Project Co is required to enter into any additional Subcontractor’s Direct Agreement pursuant to this Section 11.21, Project Co shall deliver such Subcontractor’s Direct Agreements to Contracting Authority within 30 days of execution.

**11.22 Intentionally Deleted.**

**11.23 Intentionally Deleted.**

**11.24 COR Certification**

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to Financial Close,
    - (I) use best efforts to obtain its COR Certification no later than eighteen months following Financial Close. In the event that Contracting Authority is satisfied, in its sole discretion, that the

COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 11.24 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such eighteen 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

- (II) maintain in good standing and, as applicable, renew its OHSAS 18001 Accreditation until such time as the COR-Qualified Construction Project Co Party has obtained its COR Certification, and
    - (ii) once the COR-Qualified Construction Project Co Party is certified (thereafter referred to as a “**COR-Certified Construction Project Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and
    - (iii) comply with all requirements of its OHSAS 18001 Accreditation (if a COR-Qualified Construction Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:
- (i) a COR-Qualified Construction Project Co Party fails to obtain its COR Certification in accordance with this Project Agreement and Contracting Authority determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction Project Co Party not using best efforts to obtain such certification and Contracting Authority delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party has failed to obtain its COR Certification in accordance with this Project Agreement; or
  - (ii) a COR-Qualified Construction Project Co Party fails to maintain its OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
  - (iii) a COR-Certified Construction Project Co Party fails to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement;
- (each a “**H&S Certification Default Event**”); or
- (iv) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the reasonable opinion that a COR-Qualified Construction Project Co Party will fail to maintain its OHSAS 18001

Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or

- (v) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the reasonable opinion that a COR-Certified Construction Project Co Party will fail to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,

Project Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify Contracting Authority that a H&S Certification Default Event has occurred, and:
  - (A) produce and deliver to Contracting Authority a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification or OHSAS 18001 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 or OHSAS 18001 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 5 Business Days from the date on which such request is made by Contracting Authority;
  - (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b); and
  - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required, or
- (vii) within 5 Business Days of receipt of the Notice from Contracting Authority under Section 11.24(b)(iv) or (v):
  - (A) produce and deliver to the Contracting Authority Representative a report identifying the manner in which the COR Certification or

OHSAS 18001 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 or OHSAS 18001 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 H&S Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority; and
- (C) arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(a), 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 Project Co Party that is performing any part of the Demolition to, at such person’s own cost and risk and at all times during the performance of the Works:
  - (i) conduct all work in connection with any Demolition at all times in compliance with Section 3 of the *Performance Standards Regulation and the Building Code*;
  - (ii) ensure that all persons having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a “**Demolition Supervisor**”);
  - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
  - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any Project Co Party:

- (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);
- (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition work plan and Load-Path Diagram, be present and available at the Lands 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 Lands at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition;

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

- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives notice from Contracting Authority or any Province Person or Governmental Authority that the Demolition is being conducted in a manner that is:
  - (i) not in compliance with the Demolition Requirements; or
  - (ii) not otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”),
- (c) Project Co shall, and shall cause any applicable Project Co Party to:
  - (i) 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 5 Business Days of 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 Party 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 5 Business Days from the date on which such request is made by Contracting Authority.
- (d) No Demolition shall be recommenced at the Lands 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 Lands has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.

**11.26 Intentionally Deleted.**

**11.27 Intentionally Deleted.**

**11.28 Pandemic and Epidemic Plan**

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

such plan in accordance with Schedule 10 - Review Procedure, at its cost and risk other than as provided for in Section 29.4 and Section 33.1(a)(viii).

- (c) Any Pandemic and Epidemic Response and Mitigation Plan (including any update thereto) or the potential or actual impact of any pandemic or epidemic on the Works may, at the request of a Party, be discussed at any meeting of the Works Committee or at any other meeting between the Parties reasonably requested by a Party during the Project Term. Any Party may, acting reasonably, require that any such other meeting be on a "without prejudice basis".
- (d) Nothing required pursuant to this Section 11.28 in relation to the Pandemic and Epidemic Response Mitigation Plan shall in any way obviate or detract from Project Co's right to relief under this Project Agreement in relation to a Pandemic and Epidemic Change in Law or a Pandemic and Epidemic Supply Chain Delay.

### 11.29 On-Site and Excess Soil Management

- (a) Without limiting Project Co's obligation to perform the Works at all times in accordance with Applicable Law, Project Co shall:
  - (i) perform the respective obligations of the 'project leader' and the operator of the project area for the Project under *Ontario Regulation 406/19* made under the *Environmental Protection Act* (Ontario);
  - (ii) comply, and cause each Project Co Party to comply, with Applicable Law relating to the management of excavated and excess soil, including without limitation *Ontario Regulation 406/19*;
  - (iii) develop and implement plans, procedures, assessments, and systems to ensure the Works are performed in compliance with all requirements of *Ontario Regulation 406/19*, including all such requirements applicable to Project Co in performing the respective obligations of the 'project leader' and the operator of the project area; and
  - (iv) plan and complete all excess soil management activities required for the performance of the Works in compliance with the Ontario Ministry of Environment, Conservation, and Parks' 'Management of Excess Soil – A Guide for Best Management Practices – PIBS 9603e' (as may be updated or amended from time to time).

### 11.30 Anti-Racism, Anti-Discrimination and Anti-Harassment Governance Requirements

- (a) Project Co shall, and shall cause the Construction Contractor to each, 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 to their activities in Canada.
- (b) Contracting Authority may, in its sole discretion from time to time but not more than once in any twelve-month period, require Project Co to, at its sole cost and expense, cause the obtainment of a third party attestation from a reputable, independent consulting firm with expertise in equity and diversity 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 and the Construction Contractor, establishing and maintaining a corporate commitment to providing opportunities for equity-deserving groups, including Indigenous, Black, and other racialized communities and eliminating workplace hate and intolerance.
- (c) Project Co shall, and shall cause the Construction Contractor to each, 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.

### 11.31 Indigenous Engagement

- (a) Project Co acknowledges the importance of appropriate engagement with Impacted Indigenous Nations and Indigenous Entities in connection with the Project. The objective of the engagement is to build new, and enhance existing, relationships with Impacted Indigenous Nations and Indigenous Entities. Set out below are the principles that will guide Project Co's engagement:
- (i) Provide information about the design and construction of the Project to Impacted Indigenous Nations and Indigenous Entities;
  - (ii) Provide an opportunity for these entities to provide comments on, and become involved in, the design and construction of the Project;
  - (iii) Strive to mitigate the negative impacts of the Project presented by Impacted Indigenous Nations and Indigenous Entities and consider potential opportunities to address any comments received during implementation of the Project; and
  - (iv) Develop a strategy for inclusion of local Indigenous businesses within the supply chain of Subcontractors and Suppliers associated with the Project.
- (b) Without limiting the generality of the foregoing, within thirty (30) Business Days after the Effective Date, Project Co shall prepare a draft Indigenous consultation and engagement plan which complies with the requirements of the Project Agreement for Contracting Authority's review. Project Co shall perform the Work in accordance with



- the Indigenous consultation and engagement plan accepted by Contracting Authority (the “**Indigenous Consultation and Engagement Plan**”).
- (c) At a minimum, the Indigenous Consultation and Engagement Plan shall set out a structured process for ongoing input from Impacted Indigenous Nations and Indigenous Entities and shall provide that Project Co shall consider and respond to the feedback received from this process.

## 12. REPRESENTATIVES

### 12.1 The Contracting Authority Representative

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

**12.2 The Project Co Representative**

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

**12.3 Communications to Representatives**

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

**12.4 Key Individuals**

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of

- Project Co or any Project Co Party if, in the opinion of Contracting Authority, acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) If Project Co considers it necessary to replace any individual identified in Schedule 9 – Key Individuals, 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. 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 the proposed replacement is suitably qualified and experienced and of equal or better quality and experience than the individual being replaced.
  - (c) If Contracting Authority determines, acting reasonably, that it is in the best interests of Contracting Authority that any individual identified in Schedule 9 – Key Individuals be replaced, Contracting Authority shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of 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. PROJECT WORKS SCHEDULES AND WORKS REPORT**

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

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

#### **13.2 The Project Works Schedules**

- (a) From Financial Close until the Draft Baseline Works Schedule becomes the Baseline Works Schedule pursuant to Section 13.2(d), the Proposed Works Schedule shall be deemed to be the Baseline Works Schedule and, until such time, the following provisions of the Project Agreement applicable to the Baseline Works Schedule shall be applicable to the Proposed Works Schedule as though the Proposed Works Schedule was the Baseline Works Schedule: Sections, 10.3(a)(i), 11.2(b)(v), 11.3(a)(ii), 11.6(a), 11.12(d), 11.14(a), 13.3(a), 13.5(a), 14.2(b), 14.2(d), 25.3(a)(i) and 31.2(o); the definition of “Critical Non-Conformance” set forth in Schedule 1 – Definitions and Interpretation; Sections 2.1, 2.2 and 2.3 of, and Section 6 of Appendix A to, Schedule 10 – Review Procedure; Section 1(d) of Schedule 33 – Work Report Requirements; and Section 1.6(b) of Schedule 22 – Variation Procedure.
- (b) Project Co shall, in accordance with Schedule 12 – Works Schedule Requirements, prepare and submit to Contracting Authority and the Independent Certifier:

- (i) within 75 calendar days of Financial Close, the Draft Baseline Works Schedule and a report indicating the differences between the Proposed Works Schedule and the Draft Baseline Works Schedule;
- (ii) every month within 15 Business Days following the end of each calendar month from Financial Close until Final Completion, a Progress Works Schedule;
- (iii) every month within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, a Look-ahead Schedule;
- (iv) within 10 Business Days following the written request from Contracting Authority, acting reasonably, a Works Area Micro-Schedule for any specific area, and every two weeks thereafter an updated Works Area Micro-Schedule for the specific area until the Works in the area is complete;
- (v) within 15 Business Days of the Final Completion Date, the As-built Works Schedule and the final Works Report; and
- (vi) at any time prior to Substantial Completion, within 2 Business Days following the written request by Contracting Authority, existing current or past versions of the Baseline Works Schedule or Works Report,

each meeting the requirements of Schedule 12 – Works Schedule Requirements to the satisfaction of Contracting Authority that support the completion of the Works in accordance with Section 13.1.

- (c) Contracting Authority shall, within 20 Business Days of receipt thereof, provide Project Co with comments on the first Draft Baseline Works Schedule in accordance with Schedule 10 – Review Procedure. Project Co shall revise and resubmit the Draft Baseline Works Schedule to the extent required by Schedule 10 – Review Procedure within 15 Business Days of receipt of any comments from Contracting Authority. Contracting Authority shall provide any comments on each subsequent Draft Baseline Works Schedule within 5 Business Days of receipt thereof. Section 32.5(a) shall apply in respect of any Compensation Event that occurs after the date that is 149 days following Financial Close and prior to Contracting Authority assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the Draft Baseline Works Schedule referred to in Section 13.2(b)(i), provided that in the event Contracting Authority does not provide Project Co with its comments on the Draft Baseline Works Schedule within such 20 Business Day time period, such 149 day time period shall be automatically extended by the number of days that Contracting Authority failed to provide such comments following the expiry of such 20 Business Day time period.
- (d) When agreed by the Parties, the Draft Baseline Works Schedule shall become the Baseline Works Schedule, and on such date the Baseline Works Schedule shall replace the Proposed Works Schedule.

- (e) Project Co shall submit a draft Works Area Micro-Schedule in accordance with Section 13.2(b)(iv) and Schedule 12 – Works Schedule Requirements for any portion of the Progress Works Schedule relating to any specific area of the Works involving:
- (i) integration or commissioning activities where the current scheduling information is not sufficiently detailed to allow for the effective use of resources of Contracting Authority; or
  - (ii) work activities by either Project Co or Contracting Authority that are dependent upon the activities of the other Party,
- where such activity, in Contracting Authority’s opinion, acting reasonably, requires enhanced scheduling detail from Project Co to support the effective coordination of such activity in that specific area.
- (f) Contracting Authority shall provide Project Co with comments on the draft of a Works Area Micro-Schedule in accordance with Schedule 10 - Review Procedure. Project Co shall revise the draft of the Works Area Micro-Schedule to the extent required by Schedule 10 - Review Procedure within 5 days of receipt of any comments from Contracting Authority.
- (g) When agreed by the Parties in writing, the draft of the Works Area Micro-Schedule shall become the Works Area Micro-Schedule for that specific area.
- (h) At the request of the Contracting Authority Representative, the Project Co Representative shall review the Project Works Schedules with the Contracting Authority Representative to explain to the Contracting Authority Representative’s satisfaction:
- (i) the activity logic and planning assumptions contained in the Project Works Schedules;
  - (ii) any proposed changes to the critical path of the Works;
  - (iii) the impact of the Works on the Works Milestones; and
  - (iv) any other matter raised by the Contracting Authority Representative concerning the Project Works Schedule.
- (i) Project Co shall participate in meetings and conduct workshops with Contracting Authority in relation to the Project Works Schedule in accordance with Section 3 of Schedule 12 – Works Schedule Requirements.
- (j) Project Co and Contracting Authority shall comply with the provisions of Schedule 12 – Works Schedule Requirements.
- (k) Contracting Authority shall provide Project Co with comments on the As-built Works Schedule in accordance with Schedule 10 – Review Procedure. Project Co shall revise

the As-built Works Schedule to the extent required by Schedule 10 - Review Procedure within 10 days of receipt of any comments from Contracting Authority.

- (l) Any comment or lack of comment by Contracting Authority in regards to any Project Works Schedule indicating potential Delay Events pursuant to Section 31.1(a) of the Project Agreement shall not constitute any acknowledgement or acceptance of the potential delay.

### 13.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Article 31, if, at any time:
- (i) the actual progress of the Works has significantly fallen behind the Baseline Works Schedule or a Recovery Works Schedule, as applicable, including, for clarity, any failure of Project Co to achieve a Works Milestone; or
  - (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 Baseline Works Schedule or the current Recovery Works Schedule, using Project Co's scheduling software;
  - (iii) Contracting Authority is of the opinion that:
    - (A) the actual progress of the Works has significantly fallen behind the Current Progress Works Schedule;
    - (B) Project Co will not achieve Substantial Completion by the Scheduled Substantial Completion Date;
    - (C) Project Co will not achieve Substantial Completion by the Longstop Date; or
    - (D) 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 Baseline Works Schedule or the current Recovery Works Schedule,

Contracting Authority may give Notice to Project Co and Project Co shall be required:

- (iv) within 5 Business Days of receipt, or within one month in the circumstances set forth in Sections 13.3(a)(ii) or 13.3(a)(iii)(C), of Notice from Contracting Authority, to produce and deliver to each of the Contracting Authority Representative and the Independent Certifier:
  - (A) a schedule (the "**Recovery Works Schedule**") which shall comply with all requirements of a Progress Works Schedule as set out in Section 8 of Schedule 12 – Works Schedule Requirements, except that:

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- (I) its title shall be “Recovery Works Schedule”, and
  - (II) for the first Recovery Works Schedule, the Baseline Works Schedule baseline shall be shown in the Recovery Works Schedule using the scheduling software’s baseline functionality to visually indicate the variance between the Baseline Works Schedule and the first Recovery Works Schedule, or
  - (III) for subsequent Recovery Works Schedules, if applicable, the current Recovery Works Schedule baseline shall be shown in the new Recovery Works Schedule using the scheduling software’s baseline functionality to visually indicate the variance between the current Recovery Works Schedule and the new Recovery Works Schedule,
- (B) and, if applicable, the Recovery Works Schedule shall show the new strategy or steps that are to be taken by Project Co to eliminate or reduce the delay to:
- (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (C) a report (the “**Recovery Works Schedule Report**”) which shall comply with all requirements of a Baseline Works Schedule Progress Report as set forth in Section 1(d) of Schedule 33 – Works Report Requirements except that:
- (I) its title shall be “Recovery Works Schedule Report”;
  - (II) the Recovery Works Schedule Report shall describe in narrative form:
    - (i) all variances between the Baseline Works Schedule and the Recovery Works Schedule, or, if applicable, between the current Recovery Works Schedule and a new Recovery Works Schedule; and
    - (ii) if applicable, the reasons for the delay and/or changes to the implementation strategy together with a description of the new strategy or steps that are to be taken by Project Co to eliminate or reduce the delay to Project Co:

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- (iv) achieving Substantial Completion by the Scheduled Substantial Completion Date; or
  - (v) achieving Substantial Completion by the Longstop Date, as applicable,
- (v) if applicable, bring the progress of the Works back on schedule in accordance with the deliverables provided for in Section 13.3(a)(iv).
- (b) Contracting Authority may, acting reasonably, give notice to the Lenders' Agent pursuant to Section 13 of Schedule 4 - Lenders' Direct Agreement that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority's opinion that Project Co is failing to maintain the schedule.
- (c) For greater certainty, provided that Project Co has complied with this Section 13.3 and is not in default under Section 35.1(a)(iii), the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date on its own shall not be a Project Co Event of Default for the purposes of Section 35.1(a)(v).

#### **13.4 Notification of Early Substantial Completion**

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



### 13.5 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Baseline Works Schedule and, within 10 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the Contracting Authority Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
- (i) an executive summary describing the general status of the Works and progress made over the relevant month;
  - (ii) a Current Progress Works Schedule and a Look-ahead Schedule, all in accordance with Schedule 12 – Works Schedule Requirements;
  - (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
  - (iv) a narrative description of the status of any Proceeding at Risk Matter that has not been resolved pursuant to Section 14.6, in accordance with Schedule 27 – Dispute Resolution Procedure, or otherwise;
  - (v) an update on those matters set out in Schedule 33 – Works Report Requirements; and
  - (vi) any other information specifically requested by Contracting Authority on the progress of the Works,

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

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

## 14. WORKS COMMITTEE

### 14.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
- (i) the Contracting Authority Representative;

- (ii) 3 representatives appointed by Contracting Authority from time to time, of which one will be from MTO and two will be from IO; and
- (iii) the following 3 representatives appointed by Project Co:
  - (A) the Project Co Representative;
  - (B) 1 representative of the Construction Contractor; and
  - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier shall be required to attend meetings as a non-voting member of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) The Contracting Authority Representative shall be the chairperson of the Works Committee.

#### **14.2 Function and Role**

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
  - (i) any design, construction and commissioning issues;
  - (ii) the Project Works Schedules;
  - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
  - (iv) any quality assurance and safety issues;
  - (v) the Works Reports;
  - (vi) any special matters referred to the Works Committee by MTO or IO or Project Co;
  - (vii) any Proceeding at Risk Matters referred to the Works Committee in accordance with Section 14.6;
  - (viii) any community and media relations issues in accordance with Schedule 18 – Communications;
  - (ix) monitoring the Final Commissioning Program; and

- (x) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
  - (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any change to a major milestone date set out in the Baseline Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
  - (iii) any Variation;
  - (iv) any change that may materially adversely affect Project Co’s ability to achieve the requirement(s) for Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
  - (v) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

**14.3 Term of Works Committee**

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

**14.4 Replacement of Committee Members**

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

**14.5 Procedures and Practices**

- (a) The members of the Works Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;

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- (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
  - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative, the Contracting Authority Representative and any of MTO's or IO's representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days' notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the MTO Regional Office at 659 Exeter Road, London, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives appointed by Contracting Authority (one of whom shall be the Contracting Authority Representative), and 2 representatives appointed by Project Co (one of whom shall be the Project Co Representative) shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within 5 Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Project Co and Contracting Authority shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Contracting Authority during regular business hours.

**14.6 Proceeding at Risk**

- (a) If at any time prior to Final Completion:
- (i) the Contracting Authority Representative has noted a Critical Non-Conformance in respect of the Works; or
  - (ii) the Contracting Authority Representative has noted a Works Submittal as “CRITICAL NON-CONFORMANCE” in accordance with Schedule 10 – Review Procedure (each of the matters described in clauses (i) and (ii) of this Section 14.6(a) (a “**Proceeding at Risk Matter**”));

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

- (b) Following the issuance of a Proceeding at Risk Notice, the Contracting Authority Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable bona fide effort to resolve the Proceeding at Risk Matter.
- (c) Following the issuance of a Proceeding at Risk Notice, Contracting Authority may, in its sole discretion, give notice to the Lenders’ Agent pursuant to Section 13 of Schedule 4 - Lenders’ Direct Agreement of the Proceeding at Risk Matter, together with a copy of the Independent Certifier’s written opinion.
- (d) Following the issuance of a Proceeding at Risk Notice, either party may refer the Proceeding at Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (e) Nothing set out in this Section 14.6 or in a Proceeding at Risk Notice or any act undertaken by a Party or omission of a Party pursuant to this Section 14.6 shall relieve Project Co of the risk and responsibility for the Works under this Project Agreement and for meeting all of Project Co’s obligations under and satisfying all the requirements of this Project Agreement, and no such notice, act or omission shall create any new or additional obligations or liabilities for Contracting Authority under this Project Agreement.

**15. QUALITY MANAGEMENT****15.1 Quality Management**

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

- (b) Subject to Section 15.1(c), Project Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.24(b)(vi)(C) and 11.24(b)(vii)(C) (each an “**H&S Construction Inspection**”), which H&S Construction Inspections shall:
- (i) be conducted by a Certified H&S Inspector; and
  - (ii) during the performance of the Works, include, at a minimum:
    - (A) a review of general compliance with all applicable *Occupational Health and Safety Act (Ontario)* requirements, compliance with all safety manuals applicable to the Site at which the Works are being conducted, including, but not limited to, the Contractor Site Specific Safety Manual; and
    - (B) a review of the Construction Contractor’s job hazard analysis documentation on any Site which could endanger or put at risk the safety of any Person working at the Site.
- (c) The first H&S Construction Inspection shall occur no later than the ninetieth (90<sup>th</sup>) day following Financial Close or, if that day is not a Business Day, on the Business Day immediately succeeding such day.
- (d) Project Co shall cause the results of each H&S Construction Inspection (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than 5 Business Days from the date on which a H&S Construction Inspection is completed. An H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.
- (e) To the extent an H&S Construction Inspection Report discloses any non-compliance by the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, with the terms of the COR Certification or OHSAS 18001 Accreditation, as the case may be, Contracting Authority shall have the right to require Project Co to cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be at its sole cost and expense:
- (i) to take any corrective and remedial action required by the H&S Construction Inspection Report to correct any such non-compliance and Project Co shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to comply with all instructions given by the Certified H&S Inspector in respect of actions required to be taken to correct any such non-compliance;

- (ii) to arrange to have conducted by a Certified H&S Inspector such follow-up H&S Construction Inspections of those facilities and health management systems associated with the non-compliances identified in the relevant H&S Construction Inspection Report (each an “**H&S Construction Re-Inspection**”) within 3 Business Days from the date on which any such request is made by Contracting Authority, until any and all corrective and remedial actions required by the Certified H&S Inspector with respect to the correction of each identified non-compliance is completed to the satisfaction of the Certified H&S Inspector; and
- (iii) to cause the results of each H&S Construction Re-Inspection (such results referred to as the “**H&S Construction Re-Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than 3 Business Days from the date on which a H&S Construction Re-Inspection is completed. An H&S Construction Re-Inspection Report arising from an H&S Construction Re-Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Re-Inspection Report was issued.

## 16. ACCESS AND INVESTIGATION

### 16.1 Licence to Lands

- (a) Effective from the dates set forth below and until the Termination Date, and subject to this Article 16, Contracting Authority hereby grants or shall cause to be granted, and shall continuously until the earlier of the termination of the Project Agreement or Final Completion grant or cause to be granted, to Project Co and all Project Co Parties non-exclusive licence rights of use and access to, on and over the Lands and the Expansion Infrastructure as are required by Project Co and such Project Co Parties sufficient (subject to Project Co performing its obligations described in the Project Co Permits, Licences, Approvals and Agreements and Section 11.18 of this Agreement) to allow Project Co and such Project Co Parties to perform the Works including to perform Project Co’s obligations pursuant to Sections 11.11 and 11.13:
  - (i) in respect of the Owned Lands Phase I, from [REDACTED] until the Termination Date;
  - (ii) in respect of the Owned Lands Phase II, from [REDACTED] until the Termination Date; and
  - (iii) in respect of the Non-Owned Lands, from the later of:
    - (A) [REDACTED]; and
    - (B) the date that Project Co obtains the required Project Co Permits, Licenses, Approvals and Agreements required to access such Non-Owned Lands.

- Notwithstanding the foregoing, Contracting Authority and Project Co may agree that the license rights granted under this Article 16 shall commence on a later date than as expressly set out herein.
- (b) Subject to Project Co's obligation to comply with the other terms and conditions set forth in this Project Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands, act in a manner consistent with the obligations of Project Co under this Project Agreement.
  - (c) In consideration for the licence granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
  - (d) Without derogating from any of Contracting Authority's rights hereunder, in particular and subject to this Section 16.1(d), the rights of access to the Lands prior to the Substantial Completion Date for purposes of the Contracting Authority Commissioning, 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 Lands without material interference by Contracting Authority or any Province Person from the date of Financial Close until the Termination Date. Project Co further acknowledges that following Final Completion, its access to the Lands shall be subject to the Contracting Authority Activities.
  - (e) None of the rights granted pursuant to this Section 16 shall extend beyond the boundaries of the Lands, or to any lands other than the Lands, other than easements and similar interests of Contracting Authority which benefit the Lands, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works.
  - (f) Subject as hereinbefore provided, the licence and access rights provided in this Section 16 shall automatically terminate as of the Termination Date.
  - (g) For greater certainty, the licence provided in this Section 16 shall not entitle Project Co or any Project Co Party to extract any mineral from the Lands for use in the Works.

## **16.2 Non-Exclusive Licence/Development of Lands**

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that Contracting Authority and any person authorized by Contracting Authority may occupy and possess the Lands and the Expansion Infrastructure without the prior consent of Project Co, including for the purposes of carrying out the Contracting Authority Activities and the Other Works. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Contracting Authority 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 Lands other than those portions of the Lands necessary for the performance of the Works. To the extent



that such use or 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 or development or disposition shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

### 16.3 Intentionally Deleted

### 16.4 Naming and Signage

- (a) Project Co acknowledges that Contracting Authority reserves and retains (i) all rights to designate the name for the Expansion Infrastructure and any part of the Expansion Infrastructure; (ii) all rights to signage in relation to the Lands and the Expansion Infrastructure; and (iii) all rights, Trade-Marks, naming or branding regarding the Expansion Infrastructure and any part of the Expansion Infrastructure. It is agreed, however, that, with the prior written consent of Contracting Authority, which may take into consideration any applicable governmental guidelines, including the guidelines set out in Schedule 18 – Communications, Project Co, the Project Co Parties and the Lenders may, for the period prior to Substantial Completion, erect and maintain signage which may include such parties' logos and trade names identifying their respective roles in connection with the development and construction of the Project.

### 16.5 No Interest in Land

- (a) Project Co acknowledges and agrees that, subject to the provisions of the *Construction Act*, in accordance with the principles of the IPFP Framework, neither Project Co nor the Lenders shall acquire any estate, right, title or ownership interest in the Lands or the Expansion Infrastructure or any other interest in the Site pursuant to this Project Agreement, the Project Documents or otherwise and that, following the acquisition of any Additional Lands, it will have no estate, right, title or ownership interest in any Additional Lands. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, and the Project, shall at all times remain unencumbered by any interest of Project Co or the Lenders. Project Co and the Lenders shall have access to the Lands and the Expansion Infrastructure under and subject to the licences and access rights granted under this Section 16 and the Lenders' Direct Agreement, respectively.

### 16.6 Non-Disturbance Agreement

- (a) If Contracting Authority mortgages, charges or otherwise encumbers the 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 Lands permitting Project Co and the Lenders' Agent to access and use the Lands under the licence granted pursuant to this Section 16 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee, chargee or other encumbrancer or any person claiming by or through the mortgagee, chargee or other encumbrancer. This Section 16.6 shall not apply in respect of any portion of the 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 Lands.

### 16.7 Changes in Lands

- (a) Notwithstanding any other provision in this Project Agreement, the Parties acknowledge and agree that any alteration, addition or variation to or in the Lands described in Schedule 20 – Lands or the dates by which Contracting Authority grants to Project Co access to the Lands pursuant to Section 16.1(a), shall be effected by way of Variation, subject to and in accordance with Schedule 22 – Variation Procedure and, as applicable, Section 16.8.

### 16.8 Additional Lands

- (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 16.8(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 (a “**Site Investigation Plan**”) including, with respect to contamination and other environmental conditions, utilities, geotechnical conditions, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, located on, in or under such lands. If required by Contracting Authority, Project Co shall implement the Site Investigation Plan and shall provide all reports prepared or issued (“**Site Investigation Reports**”) in connection with the Site Investigation Plan to

Contracting Authority. Contracting Authority shall be addressee of all such Site Investigation Reports and shall be entitled to rely on the reports;

- (iv) **Intentionally Deleted;**
- (v) any savings in Direct Costs to Project Co that will result in a reduction in the compensation payable to Project Co in accordance with Section 1.11(a) of Schedule 22 – Variation Procedure.

Project Co shall promptly provide such additional information as Contracting Authority may request from time to time in relation to the Additional Lands Request.

- (c) 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 Lands once acquired and shall, subject to and in accordance with this Section 16.8 and Schedule 22 – Variation Procedure, result in a Variation, provided that such additional lands, rights or interests shall become “Additional Lands” and part of the Lands only if and when,
  - (i) Contracting Authority has issued a Variation Confirmation pursuant to Schedule 22 – Variation Procedure; and
  - (ii) Contracting Authority has successfully acquired or obtained such rights, title or interest in the proposed Additional Lands.
- (d) Project Co acknowledges and agrees that any decision of Contracting Authority pursuant to Section 16.8(c) 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 16.8(c), Project Co acknowledges and agrees that Contracting Authority’s decision shall not be subject to dispute resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (e) Additional Lands acquired or obtained by Contracting Authority pursuant to this Section 16.8 shall constitute Lands for the purposes of this Project Agreement, provided that, notwithstanding anything to the contrary in this Project Agreement:
  - (i) Project Co shall be responsible for and shall indemnify and hold harmless Contracting Authority and the Province Persons from and against all costs, risks, obligations, and liabilities in respect of, or arising in connection with, such Additional Lands (and any portion of such Additional Lands comprising the Site) including claims relating to Site Conditions thereon and therein, including with respect to Contamination, Items of Interest or Value, Contracting Authority Utility Infrastructure or Species-at-Risk;
  - (ii) Contracting Authority provides no representation or warranty, and shall have no obligation to Project Co, in respect of, or arising in connection with, any

Additional Lands (and any portion of Additional Lands comprising a Site), including for certainty and without limitation, pursuant to Sections 6.2, 7.4, 9.2, 11.13, 18.2, 18.3, 18.4 and 18.5, other than to grant or cause to be granted to Project Co and the Project Co Parties, non-exclusive license rights of use and access to, on and over the Additional Lands to allow Project Co and such Project Co Parties to carry out those Works to be performed on the Additional Lands;

- (iii) to the extent related to or arising in connection with the Additional Lands Request or Additional Lands, Project Co shall not be entitled to claim any cost or schedule relief, including any Delay Event, Compensation Event, Relief Event or event of Force Majeure. In no event will Contracting Authority be liable for any delay by Contracting Authority, any Contracting Authority Party or any third party in:
  - (A) reviewing or processing Additional Lands Requests; or
  - (B) acquiring or obtaining Additional Lands;pursuant to this Section 16.8; and
- (iv) Project Co shall be solely responsible for and shall indemnify and hold harmless Contracting Authority from and against all costs and expenses of Contracting Authority in connection with any Additional Lands Request, (including, for clarity, any costs incurred by Contracting Authority in acquiring or obtaining any rights or interests in the Additional Lands) whether or not such Additional Lands Request results in the acquisition or obtainment of Additional Lands.
- (f) Project Co shall be entitled to acquire ownership of or obtain rights or interests in or to any properties at its own cost and expense, however, such properties shall not, for the purposes of this Project Agreement, form part of the Lands and no New Expansion 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 16.8(f).

## 16.9 Adequacy of the Lands

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

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

#### **16.10 Inspection and Investigation of the Lands**

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

#### **16.11 No Warranty in Respect of Lands**

- (a) Except as provided in Sections 18.2, 18.3, 18.4 and 18.5, 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 Expansion Infrastructure or other buildings, structures and works, on, over or under the Lands; or
  - (iii) any Site Conditions in respect of the Lands.

#### **16.12 No Claims in Respect of Lands**

- (a) Except as expressly provided in Sections 18.2, 18.3, 18.4 and 18.5, 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 Expansion 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 Submission Deadline other than the visual inspection conducted pursuant to Section 16.10;
  - (ii) any claim that the Lands are inadequate; or
  - (iii) any claim that incorrect, inaccurate, incomplete or insufficient information on any matter relating to the Lands, the Existing Expansion Infrastructure or the

Site Conditions was given to it by any person, whether or not Contracting Authority or a Province Person.

## 17. TITLE ENCUMBRANCES

### 17.1 Title Encumbrances

- (a) Project Co shall perform all obligations under all Encumbrances and Title 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;
  - (ii) obligations under any Encumbrance (which is not a Title Encumbrance) added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as obligations of Project Co, the Parties agree that such obligations are obligations of Project Co, or such Encumbrances are necessary or desirable for Contracting Authority's purposes and do not materially interfere with the use of the Lands for purposes of the Works;
  - (iii) obligations under any Encumbrance or Title Encumbrance which the applicable Governmental Authority may formally relieve or waive, with the consent of Contracting Authority, with respect to any Development Approval; and
  - (iv) obligations under any Encumbrance or Title Encumbrances that Appendix "A" – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for Contracting Authority performing.
- (b) All Works performed by or on behalf of Project Co shall be performed in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 17.2 and Section 17.3, the performance of the Works shall not give rise to a right for any person to obtain title to or any interest in the Lands or any part of it, except in accordance with the terms of this Project Agreement.

### 17.2 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered upon or against the Lands or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) Each of Project Co and Contracting Authority shall promptly notify the other of any Encumbrance which is not a Title Encumbrance as soon as it becomes aware thereof, provided, however, that failure by Contracting Authority to provide Notice to Project Co of any Encumbrance pursuant to this Section 17.2(b) shall not give rise to a right of Project Co to a Delay Event, Compensation Event or any other right or remedy under or pursuant to this Project Agreement.

- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance following Financial Close, 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 termination, removal, vacating or discharge of an Encumbrance referred to in this Section 17.2(c) 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) are outstanding.
- (d) In the event that the Lands or any part thereof or any interest therein is or becomes subject to any Encumbrance which is not a Title Encumbrance and which is not due to an act or omission of Project Co or any Project Co Party, or which has not arisen in relation to the Works, prior to performing obligations under any such Encumbrance, Project Co shall notify Contracting Authority of any such Encumbrance and Contracting Authority shall:
- (i) cause the Encumbrance to be removed, vacated or discharged;
  - (ii) perform the required obligations thereunder; or
  - (iii) instruct Project Co to perform the required obligations thereunder.
- (e) If Section 17.2(d) requires Project Co to perform obligations under an Encumbrance which performance imposes costs or delays on performance of the Works, then such performance shall, subject to and in accordance with Section 31, be treated as a Delay Event and, subject to and in accordance with Section 32, be treated as a Compensation Event.

### 17.3 *Construction Act (Ontario)*

- (a) The Parties acknowledge that Section 17.2 shall apply to claims for liens made against the Lands pursuant to the *Construction Act* and shall also apply to claims made against Contracting Authority or the holdback under the *Construction Act* 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*.

- (c) Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the *Construction Act*, require that a certificate of completion under section 33(1) of the *Construction Act* for such Subcontract be issued and the relevant Subcontractor provide statutory declarations confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall promptly provide Contracting Authority with a copy of any materials which are provided to the Lenders to evidence compliance with the *Construction Act*.
- (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 except (i) a search that reveals Encumbrances that are not permitted by this Project Agreement, (ii) a search requested based on a reasonable suspicion that an Encumbrance that is not permitted by this Project Agreement has been registered on title to the Lands, and (iii) a search requested for the purpose of confirming that an Encumbrance that is not permitted by this Project Agreement has been discharged from title to the Lands.
- (f) Project Co shall cause a Payment Certifier to be appointed under the Design and Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Design and Construction Contract in accordance with the *Construction Act*.

## 18. SITE CONDITIONS

### 18.1 Acceptance of the Lands, Existing Expansion Infrastructure and Site Conditions

- (a) Project Co agrees to accept the Lands (including the Existing Expansion Infrastructure) on an "as is, where is" basis, and shall be responsible for all Site Conditions on, in or under the Lands, except in respect of:
  - (i) Contamination;
  - (ii) Items of Interest or Value;
  - (iii) Species-at-Risk; and
  - (iv) Utility Infrastructure,its responsibility for which shall be only as described in Sections 18.2 to 18.5, respectively.
- (b) For greater certainty, except as expressly set out in this Project Agreement, nothing in this Section 18 shall relieve Project Co from performing any of its obligations hereunder (including its obligations under Section 10.3 and 11.11).



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**18.2 Contamination**

- (a) **"Project Co Contamination"** means any Contamination on, in or under, or migrating to or from, the Lands that:
- (i) was within the Knowledge of the Project Manager as of the Technical Submission Deadline;
  - (ii) was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports and Geotechnical Reports as of the Technical Reference Date;
  - (iii) could have been properly inferable, readily apparent or readily discoverable on the basis of the Project Co Land Inspection, including the nature and condition of the Lands, taking into account all matters relating to the Lands, and all other Site Conditions, including the Existing Expansion Infrastructure and other structures, installations, fixtures, services, works, buildings and other improvements on, over and under the Lands existing as of the Technical Submission Deadline;
  - (iv) affects the Lands and was caused or contributed to by Project Co or any Project Co Party; or
  - (v) is caused by any Expansion Infrastructure User (other than a Province Person), Project Co or any Project Co Party.
- (b) **"Contracting Authority Contamination"** means all Contamination on, in or under, or migrating to or from, the Lands other than Project Co Contamination.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Contamination.
- (d) Any Contracting Authority Contamination encountered by Project Co shall, subject to and in accordance with Section 31, be treated as a Delay Event and, subject to and in accordance with Section 32, be treated as a Compensation Event; or
- (e) 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 any applicable provisions of this Project Agreement in respect thereof:
- (i) at Contracting Authority's cost subject to and in accordance with Section 18.2(d) in respect of any Contracting Authority Contamination; and
  - (ii) at its own cost in respect of all Project Co Contamination.
- (f) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law or any applicable provisions of this Project Agreement in respect of

Contamination, Project Co shall not undertake any significant work pursuant to Section 18.2(e) 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.

- (g) 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 18.2(e), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost subject to and in accordance with Section 18.2(h).
- (h) If Section 18.2(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works or to delay or suspend all or any part of the Works, as a result of any instructions given by Contracting Authority pursuant to Section 18.2(g), and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension, variation, delay or suspension in the Works in accordance with Schedule 22 – Variation Procedure.

### 18.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on, in or under the Lands (collectively the "**Items of Interest or Value**") are or shall be the sole and absolute property of Contracting Authority.
- (b) "**Project Co Items of Interest or Value**" shall mean any Items of Interest or Value that:
  - (i) were within the Project Manager Knowledge as of the Technical Submission Deadline; or
  - (ii) were described in or readily apparent from the Archaeological Reports, or the Environmental Assessments as of the Technical Reference Date.
- (c) "**Contracting Authority Items of Interest or Value**" means all Items of Interest or Value other than the Project Co Items of Interest or Value.
- (d) Project Co shall be responsible, at its sole cost and expense, for the Project Co Items of Interest and Value.
- (e) Any Contracting Authority Items of Interest or Value encountered by Project Co, shall, prior to Substantial Completion shall, subject to and in accordance with Section 31, be treated as a Delay Event and, subject to and in accordance with Section 32, be treated as a Compensation Event.

- (f) Upon the discovery of any Items of Interest or Value, Project Co shall:
- (i) immediately inform the Contracting Authority Representative of such discovery;
  - (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 Applicable Law (including all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremation Services Act, 2002 (Ontario)* and the Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the Ontario Heritage Act (Ontario)) and any applicable provisions of this Project Agreement in respect thereof:
    - (A) at Contracting Authority's cost subject to and in accordance with Section 18.3(e) in respect of any Contracting Authority Items of Interest or Value; and
    - (B) at its own cost in respect of any Project Co Item of Interest or Value.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any discovery of any Items of Interest or Value which are in addition to any required pursuant to Section 18.3(f), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost subject to and in accordance with Section 18.3(g).
- (h) If Section 18.3(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works or to delay or suspend all or any part of the Works, as a result of any instructions given by Contracting Authority pursuant to Section 18.3(g), and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension, variation, delay or suspension in the Works in accordance with Schedule 22 – Variation Procedure.

#### 18.4 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 Submission Deadline;
  - (ii) was referenced or described in or was inferable, readily apparent or readily discernible, from the Background Information;

- (iii) was readily apparent from the Project Co Land Inspections;
  - (iv) is a service connection; or
  - (v) is street lighting and traffic signal cables owned by a Municipality or MTO.
- (b) **“Contracting Authority Utility Infrastructure”** means:
- (i) any Mislocated Utility Infrastructure; and
  - (ii) any other Utility Infrastructure on, or in the Lands, other than Project Co Utility Infrastructure.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Utility Infrastructure.
- (d) Any Contracting Authority Utility Infrastructure encountered by Project Co shall, subject to and in accordance with Section 31 be treated as a Delay Event and, subject to and in accordance with Section 32, be treated as a Compensation Event.
- (e) Project Co shall promptly notify Contracting Authority in writing upon the discovery of any Contracting Authority Utility Infrastructure.
- (f) Project Co shall not undertake any work in respect of any Contracting Authority Utility Infrastructure until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Contracting Authority Utility Infrastructure and has instructed Project Co to proceed with such work.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contracting Authority Utility Infrastructure then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost, subject to and in accordance with Section 18.4(h).
- (h) If Section 18.4(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.

### 18.5 Species-at-Risk

- (a) **“Project Co Species-at-Risk”** shall mean any Species-at-Risk which may be found on, in, at, or under the Lands:
- (i) that was a Species-at-Risk as of the Technical Submission Deadline and the occurrence of which was described in the Environmental Assessments (including the location in which it was found);

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- (ii) the occurrence of which is caused or contributed to by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement (but only to the extent of such cause or contribution); or
    - (iii) that are new populations of Species-at-Risk in locations on the Lands caused by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement and which resulted in the creation of conditions deemed suitable habitat for Species-at-Risk in accordance with Applicable Law.
  - (b) **“Contracting Authority Species-at-Risk”** shall mean any Species-at-Risk which may be found on, in, at, or under the Lands other than Project Co Species-at-Risk.
  - (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Species-at-Risk.
  - (d) Any Contracting Authority Species-at-Risk encountered by Project Co shall, subject to and in accordance with Section 31 be treated as a Delay Event and, subject to and in accordance with Section 32, be treated as a Compensation Event.
  - (e) Upon the discovery of any Species-at-Risk, Project Co shall immediately inform the Contracting Authority Representative, and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 15 – Output Specifications and Schedule 17 – Environmental Obligations in respect thereof (including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk):
    - (i) at Contracting Authority’s cost pursuant to Section 18.5(d) in respect of Contracting Authority Species-at-Risk; and
    - (ii) at its own cost in respect of Project Co Species-at-Risk.
  - (f) In the event that Contracting Authority wishes Project Co to perform any actions which are in addition to any required pursuant to Section 18.5(e), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost pursuant to Section 18.5(g).
  - (g) If Section 18.5(f) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of any Contracting Authority Species-at-Risk or as a result of any instructions given by Contracting Authority pursuant to Section 18.5(f) and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.

**19. GOVERNMENTAL AUTHORITY AND THIRD PARTY FINANCIAL OBLIGATIONS****19.1 Financial Obligations**

- (a) Project Co shall be responsible for all Financial Obligations under or in respect of all Project Co Permits, Licences, Approvals and Agreements and Contracting Authority shall be responsible for all Financial Obligations under or in respect of all Contracting Authority Permits, Licences, Approvals and Agreements, including to any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
- (i) any development charges relating to the Works, the Expansion Infrastructure or the Lands;
  - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
  - (iii) any railway administration fees required in respect of works or services required to be performed, such works or services to include the monitoring and controlling of rail movements to ensure safety;
  - (iv) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
  - (v) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.
- (b) The Parties agree that any refund, partial rebate or credit granted by any applicable Utility Company or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 19.1(a) shall be for the benefit of Contracting Authority to the extent such Financial Obligations were paid by Contracting Authority and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

**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 and the Expansion Infrastructure, Project Co:
- (i) acknowledges and agrees that Contracting Authority, the Province Persons and the Government Entities and their respective representatives shall, prior to Final Completion, have unrestricted access to the Site, the Lands, the Expansion Infrastructure and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours including for the purposes of general inspection or audit, or of attending

any test or study being carried out in respect of the Works, or to fulfill any statutory, public or other duties or functions; and

- (ii) shall, and shall ensure that the Project Co Parties shall, throughout the Project Term, give the archaeologist appointed by Contracting Authority in respect of the Project, and each of its agents, representatives, contractors and employees (collectively, the “**Contracting Authority Archaeologist**”) access to those parts of the Site, the Lands and the Expansion Infrastructure as is necessary for the purpose of allowing the Contracting Authority Archaeologist to monitor and inspect the excavation of the Site and the Lands, provided always that such right of access shall be on reasonable prior Notice to Project Co.
- (b) In exercising their access rights under Section 20.1(a), Contracting Authority, the Province Persons and the Government Entities and their respective representatives shall:
- (i) provide reasonable prior Notice appropriate to the circumstances (other than for any offices or other facilities provided at the Lands for the use by Contracting Authority and/or Province Persons);
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
  - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

## 20.2 Increased Monitoring

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

## 20.3 Right to Open Up

- (a) Project Co shall ensure that Contracting Authority is afforded advance Notice of, and that Contracting Authority is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If Project Co does not provide such Notice and opportunity, Project Co shall at the request of Contracting Authority uncover any relevant part of the Works which have been covered up or

- otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit Contracting Authority to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.
- (b) Contracting Authority shall have the right, at any time prior to the Final Completion Date, to request Project Co to uncover or open up and inspect (or allow Contracting Authority to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Contracting Authority reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Contracting Authority makes such a request, Contracting Authority shall include reasonably detailed reasons with such request.
- (c) If an inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to Contracting Authority and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (d) If an inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 31, be treated as a Delay Event and, subject to and in accordance with Section 32, be treated as a Compensation Event.

#### **20.4 No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by Contracting Authority or the Contracting Authority Representative of the rights under this Article 20 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Article 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:
- (i) any contractors, consultants or other persons authorized by the Contracting Authority Representative or Contracting Authority, including the Other Contractors, have access to those parts of the Site, the Lands and the Expansion Infrastructure as is necessary for the purpose of carrying out the Other Works, and the Utility Relocation Works, provided that, wherever consistent with the



- requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or the Works;
- (ii) the Independent Certifier has access to the Site, the Lands and the Expansion Infrastructure to the extent required to perform its obligations pursuant to Schedule 6 - Independent Certifier Agreement;
  - (iii) inspectors and other persons authorized to act on behalf of Contracting Authority have access to the Site, the Lands and the Expansion Infrastructure for inspection and acceptance purposes;
  - (iv) Utility Companies and their agents, have access to the Site, the Lands and the Expansion Infrastructure at all reasonable times, in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements or the Utility Relocation Works or encroachment permits, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or the Works;
  - (v) all Governmental Authorities and Emergency Service Providers have access to the Site, the Lands and the Expansion Infrastructure in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or the Works; and
  - (vi) any Province Person, Other Contractors, Governmental Authorities, Emergency Service Providers and Utility Companies are permitted to enter upon the Site, the Lands and the Expansion Infrastructure for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Site and the Lands and the Expansion Infrastructure (including any other highway) owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or the Works.
- (b) In exercising their access rights under Section 20.5(a), each person referred to therein (except for Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 11.12) shall (except in the case of access rights described in Section 20.5 for the purpose of responding to an Emergency (for the purposes of this clause 20.5(b), references in the definition of “Emergency” to Contracting Authority or the Contracting Authority Representative shall be deemed to

be references to the applicable Governmental Authority or Emergency Service Provider) and except to the extent inconsistent with the applicable requirements of such Governmental Authority or Emergency Service Provider):

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

## 20.6 Public Use

- (a) It is Contracting Authority and not Project Co that grants to the general public the right to use the Expansion Infrastructure. Project Co shall use commercially reasonable efforts to keep open for public use the Existing Expansion Infrastructure and Expansion Infrastructure at all times during the Project Term, except for lane closures or diversions of traffic flow by Project Co in accordance with the provisions of the Traffic Management Plan and, except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against Contracting Authority, any Province Person, Emergency Service Providers or any other Governmental Authority for or in respect of any lane closure or diversion, including any lane closure or diversion referred to in this Section or as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority affecting all or any part of the Site, the Lands or the Existing Expansion Infrastructure and Expansion Infrastructure at any time.
- (b) Subject to closures or diversions of traffic flow with respect to the Expansion Infrastructure permitted by Section 20.6(a), Project Co shall cause all Works to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure (other than the Expansion Infrastructure), whether under the control or in the possession of Contracting Authority or any other person.

## 21. UTILITIES

### 21.1 Project Co's General Responsibilities

- (a) Project Co shall not construct, install or permit the construction or installation of any Utility Infrastructure on, in, under or over the Site, the Lands or any part thereof without the prior written consent of the Contracting Authority Representative (which consent may be given or withheld in the sole discretion of the Contracting Authority); provided that Project Co shall not be in default under this Section 21 as a result of any Utility Work carried out in compliance with this Section 21 or any other provisions of this Project Agreement. Without limiting the generality of the foregoing, at no time shall

Project Co use or permit the use of the Lands or Expansion Infrastructure for Utility Infrastructure (other than Utility Infrastructure, if any, located within the Lands at Commercial Close) without the prior written consent of the Contracting Authority.

- (b) Subject to Section 18.4, and except in respect of Utility Relocation Work for which Contracting Authority is responsible pursuant to this Project Agreement, Project Co shall be solely responsible, from Financial Close until Final Completion and following Final Completion in respect of the Works, for confirming the actual locations of all Utility Infrastructure located on, in, under, over or adjacent to the Lands and Expansion Infrastructure, and performing all required work and coordination with all Utility Companies in connection with the construction, installation, operation, repair, preservation, relocation, or maintenance of Utility Infrastructure in, on, under, over, or adjacent to the Lands.
- (c) All Utility Infrastructure located at Commercial Close or thereafter on, in, under, over, or adjacent to the Lands (including Utility Infrastructure within any excavation) is to remain in service and be protected and preserved by Project Co during the performance of the Works throughout the Project Term.

## 21.2 Utility Work

- (a) With the exception of the Utility Relocation Works for which Contracting Authority is responsible, Project Co shall be responsible for all temporary and permanent Utility Infrastructure required as part of the Works in connection with or as part of the Expansion Infrastructure and for all Utility Work to be carried out in connection with any Utility Agreements reached with Utility Companies.
- (b) Project Co shall:
  - (i) in the event necessary and to the extent necessary to perform the Works, be responsible for developing and entering into Utility Agreements with Utility Companies and shall provide a copy of each such Utility Agreement to Contracting Authority within 15 Business Days following the entering into of such agreement;
  - (ii) in the event a Utility Company requests Betterments to be completed by Project Co and unless Section 11.8(e) applies, negotiate directly with the Utility Company such requirements, associated costs, and payment method related to the Betterments and include such terms in the Utility Agreement; and
  - (iii) provide Contracting Authority with not less than 5 Business Days' prior written Notice of any meeting with a Utility Company to discuss or negotiate a Utility Agreement. Contracting Authority shall, at its option, be entitled to attend any such meeting and to observe or participate in any discussions or negotiations at such meeting; provided, however, that Contracting Authority's attendance or participation in meetings with Utility Companies shall not limit or affect any of Project Co's obligations pursuant to this Section 21 and shall not result in any

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transfer of risk or expense to Contracting Authority or any Contracting Authority Party in respect of any such obligations.

- (c) In the event a Utility Company requests a Betterment to be completed by Project Co which cannot be completed without causing a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, Project Co shall consult with Contracting Authority and obtain the written consent of Contracting Authority as to the terms of such Betterment prior to entering into a Utility Agreement with such Utility Company. If Contracting Authority does not provide written consent in accordance with this Section 21.2(c) then such Utility Company shall be deemed a Non-Participating Utility and the provisions of Section 11.8(e) shall apply.
- (d) Project Co shall be responsible for compliance with applicable Utility Company standards or Ontario Provincial Standards, whichever is more stringent.
- (e) Project Co shall comply with the general provisions for Utility Work as set forth in Schedule 15-2 Part 1 Article 5 and Schedule 15-2 Part 2 Article 12.
- (f) Project Co shall be responsible for any damage to Utility Infrastructure caused by any Project Co Party.
- (g) Subject to the rights of Utility Companies, all Utility Work shall be carried out by or under the supervision of and, except as otherwise expressly provided in this Project Agreement, at the risk and expense of Project Co and, without limiting the generality of the foregoing, Project Co shall be responsible for:
  - (i) obtaining all rights of entry or access to the relevant Utility Infrastructure that are necessary or expedient in connection with the Utility Work or providing access to the relevant Lands if such work is to be carried out by the Utility Company;
  - (ii) identifying all requirements in respect of the Utility Work, including determining the most effective strategies for undertaking the Utility Work;
  - (iii) liaising, arranging, coordinating and entering into all necessary agreements with relevant Utility Companies in connection with the Utility Work, including obtaining any necessary consents or approvals in connection therewith, providing access for inspections and providing information and plans during and following completion of the Utility Work;
  - (iv) ensuring that all permits, licenses, and approvals in connection with the Utility Work are obtained, including preparing all required documentation in connection therewith;
  - (v) ensuring compliance at all times with the provisions of the Project Agreement, including the Output Specifications. Project Co shall not rely solely on previous engineering work, location plans, as-built drawings supplied by Utility

Companies or other similar documents for confirming locations of Utility Infrastructure;

- (vi) observing and complying with any instructions or directions relating to the Utility Work that may be issued by Contracting Authority on its own behalf or on behalf of a relevant Utility Company;
  - (vii) securing or causing to be secured the entry into or execution of all relevant construction and maintenance agreements, service contracts, and other agreements in connection with the Utility Work; and
  - (viii) when any Utility Work affecting the Utility Infrastructure is to be carried out by or on behalf of Project Co, Project Co shall, prior to commencing such Utility Work, give reasonable written notice to the relevant Utility Company confirming that the Utility Work is being carried out by or on behalf of Project Co pursuant to the Project Agreement.
- (h) Project Co shall provide Contracting Authority with copies of all correspondence and documentation received or sent by Project Co from or to Utility Companies forthwith following the receipt or sending thereof.

### 21.3 Utility Costs

- (a) Project Co shall be responsible for all costs and expenses incurred by Project Co or any Project Co Party in connection with or relating to all Utility Work (whether such costs and expenses are incurred pursuant to a Utility Agreement or otherwise).
- (b) Notwithstanding Section 19.1(b) of the Project Agreement, Contracting Authority shall have no obligation to remit, refund or otherwise pay to Project Co any amount received by Contracting Authority as a refund, rebate, partial rebate or credit issued or granted to or in favour of Contracting Authority by a person noted in Section 19.1(b) of the Project Agreement relating to Financial Obligations paid by Project Co under or in respect of any Utility Agreement.
- (c) Project Co covenants and agrees not to demand, claim or seek from Contracting Authority or a Utility Company or from any person other than a Project Co Party the payment, repayment, reimbursement or recovery of any costs or expenses incurred by Project Co in connection with or relating to any Utility Work carried out by or on behalf of Project Co pursuant to the Project Agreement. For greater certainty, Project Co's covenant and agreement not to demand, claim or seek from Contracting Authority or a Utility Company or from any person other than a Project Co Party the payment, repayment, reimbursement or recovery of any costs or expenses incurred by Project Co in connection with or relating to any Utility Work carried out by or on behalf of Project Co pursuant to the Project Agreement shall apply notwithstanding that such costs or expenses may be:
  - (i) payable or repayable to, or reimbursable or recoverable from, Contracting Authority under or pursuant to Applicable Law;

- (ii) payable or repayable to, or reimbursable or recoverable from, a person (including a Utility Company) under or pursuant to Applicable Law;
- (iii) payable or repayable to Contracting Authority, or reimbursable or recoverable by Contracting Authority, from a person (including a Utility Company) under or pursuant to Applicable Law;
- (iv) payable or repayable to a person, or reimbursable or recoverable by a person, from Contracting Authority under or pursuant to Applicable Law;
- (v) payable or repayable to Contracting Authority, or reimbursable or recoverable by Contracting Authority, from a person (including a Utility Company) under or pursuant to any agreement, commitment or undertaking given by such person to or in favour of Contracting Authority, or any cost-sharing arrangement between Contracting Authority and such person; or
- (vi) payable or repayable to a person (including a Utility Company), or reimbursable or recoverable by a person (including a Utility Company), from Contracting Authority under or pursuant to any agreement, commitment or undertaking given by Contracting Authority to or in favour of such person, or any cost-sharing arrangement between Contracting Authority and such person.

For greater certainty, Project Co shall not be entitled to receive, or participate in, the benefit of any cost-sharing or cost-apportionment arrangement between Contracting Authority and any person (including a Utility Company) regarding Utility Work that would have the effect of reducing the costs and expenses incurred by Contracting Authority to carry out such Utility Work if Contracting Authority was required to complete the same (for certainty, Utility Work is the responsibility of Project Co pursuant to the provisions of the Project Agreement, including pursuant to this Section 21.3).

- (d) To the extent that a person (including a Utility Company) incurs costs or expenses in connection with or relating to Utility Work carried out by or on behalf of Project Co pursuant to the Project Agreement, and Contracting Authority pays to such person or reimburses such person such costs and expenses under or pursuant to:
  - (i) an agreement, commitment or undertaking given by Contracting Authority to or in favour of such person; or
  - (ii) a practice or policy adopted or implemented by Contracting Authority; or
  - (iii) any cost-sharing arrangement between Contracting Authority and such person,

then Project Co covenants and agrees to pay and remit forthwith to Contracting Authority an amount equal to the full amount of Contracting Authority's payment or reimbursement of such costs and expenses to such person following written Notice thereof from Contracting Authority to Project Co, and Project Co acknowledges and agrees that the amount of such payment or reimbursement made by Contracting

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Authority shall constitute, and shall be deemed to constitute, a debt of an equivalent amount immediately due and payable by Project Co to Contracting Authority pursuant to the terms of the Project Agreement, and Contracting Authority shall be entitled to exercise its rights under Section 4 of the Project Agreement to seek payment of such debt due and payable by Project Co to Contracting Authority.

- (e) To the extent that Project Co or a person (including a Utility Company) completes any Utility Work, and Project Co receives from such person, as a consequence of any form of cost-apportionment arrangement between Contracting Authority and such person known to Project Co (whether such cost-apportionment arrangement is known to Project Co by notice or disclosure made by Contracting Authority to Project Co or otherwise), any form of payment or reimbursement for, or any form of reduction regarding, all or any portion of the costs and expenses incurred by Project Co or by such person to complete such Utility Work, or receives from such person any form of credit that has the effect of reducing the costs and expenses incurred by Project Co to complete such Utility Work, then in each case, Project Co shall:
- (i) provide a written Notice to Contracting Authority confirming to Contracting Authority the identity of such person, the amount of such payment, reimbursement or credit, and the basis under which Project Co received the same, together with any other information that Contracting Authority, after receiving such written Notice, considers relevant or necessary; and
  - (ii) to pay and remit forthwith to Contracting Authority an amount equal to the full amount of such person's payment or reimbursement of such costs and expenses to Project Co, or the full amount of the credit or reduction in cost given by such person to Project Co in respect of such costs and expenses, as applicable, that is a consequence of a cost apportionment arrangement between Contracting Authority and such person in either case, following written Notice thereof from Contracting Authority to Project Co, and Project Co acknowledges and agrees that the amount of such payment, reimbursement or credit made or given by such person shall constitute, and shall be deemed to constitute, a debt of an equivalent amount immediately due and payable by Project Co to Contracting Authority pursuant to the terms of the Project Agreement, and Contracting Authority shall be entitled to exercise its rights under Section 4 of the Project Agreement to seek payment of such debt due and payable by Project Co to Contracting Authority.
- (f) Project Co shall provide Contracting Authority with copies of all correspondence and documentation received or sent by Project Co from or to Utility Companies forthwith following the receipt or sending thereof.

**21.4 Intentionally Deleted****22. ENVIRONMENTAL REQUIREMENTS****22.1 Environmental Requirements**

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

**22.2 Greenhouse Gas Credits**

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

**23. INDEPENDENT CERTIFIER AND COMBINED DISPUTE RESOLUTION BOARD****23.1 Appointment of Independent Certifier**

- (a) On or prior to Financial Close, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement, and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 – Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 23.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

**23.2 Role of Independent Certifier**

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



**23.3 Changes to Terms of Appointment**

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

**23.4 Right to Change Appointment**

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

**23.5 Cooperation**

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

**23.6 Payment of Independent Certifier**

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

**23.7 Replacement**

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

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

### **23.8 Combined Dispute Resolution Board**

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

## **24. COMMISSIONING AND COMPLETION**

### **24.1 Commissioning Activities**

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

### **24.2 Final Commissioning Program**

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect of the Project Co Commissioning and the Contracting Authority Commissioning and shall provide a copy thereof to the Independent Certifier, the Contracting Authority

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- Commissioning Consultant and the Contracting Authority Representative not less than 270 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall, at a minimum:
- (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
    - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
    - (B) Final Completion on or before the Scheduled Final Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities;
  - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Contracting Authority than those set out in the Outline Commissioning Program, unless otherwise agreed to by Contracting Authority;
  - (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
  - (vi) include a schedule of each of the Project Co Commissioning Tests and the Contracting Authority Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the Contracting Authority Commissioning;
  - (viii) provide for the re-verification of systems following the Contracting Authority Commissioning; and
  - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) Contracting Authority shall provide Project Co with comments on the draft Final Commissioning Program in accordance with the procedures contemplated by Section 4.1 of Schedule 10 – Review Procedure, and Project Co shall revise the draft Final

Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days of receipt of any comments from Contracting Authority.

- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program with respect to Substantial Completion and Final Completion.

### 24.3 Commencement of Project Co Commissioning

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

### 24.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least ten Business Days' notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice (the "**10-Day Notice**").
- (b) Project Co shall deliver notice to the Independent Certifier and the Contracting Authority Representative upon the satisfaction of all of the requirements for Substantial Completion under this Project Agreement (the "**Substantial Completion Notice**"). The Substantial Completion Notice shall (i) describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, (ii) include as appendices all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, and (iii) include Project Co's opinion that the conditions for issuance of the Substantial Completion Certificate under this Project Agreement have been satisfied.
- (c) Within two Business Days of receiving the Substantial Completion Notice from Project Co, the Independent Certifier shall review the Substantial Completion Notice to determine whether or not the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List. For the purposes of this Section 24.4(c), if the Substantial

Completion Notice contains a Substantial Completion Deliverable that, in the reasonable opinion of the Independent Certifier, is of such poor quality that it would impede, in a material way, the ability of Contracting Authority and the Independent Certifier to assess whether or not the requirements for Substantial Completion under this Project Agreement have been satisfied, then such Substantial Completion Deliverable shall be deemed to have not been included as part of the Substantial Completion Notice. Following such review and determination by the Independent Certifier and before the expiry of such two Business Day period, the Independent Certifier shall either deliver notice to Project Co and Contracting Authority:

- (i) confirming that the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the “**IC Substantial Completion Deliverables Confirmation**”); or
- (ii) setting out a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (an “**IC Substantial Completion Deliverables Deficiencies List**”).

If the Independent Certifier provides a notice to Project Co and Contracting Authority setting out an IC Substantial Completion Deliverables Deficiencies List pursuant to this Section 24.4(c), then Project Co shall subsequently submit a new and replacement version of the Substantial Completion Notice pursuant to Section 24.4(b), which, for greater certainty, includes all of the Substantial Completion Deliverables, and the process described in this Section 24.4(c) shall be repeated until the IC Substantial Completion Deliverables Confirmation is provided by the Independent Certifier to Project Co and Contracting Authority.

- (d) Contracting Authority shall, within five Business Days after receipt of the IC Substantial Completion Deliverables Confirmation, provide the Independent Certifier and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied or, if applicable, any reasons as to why Contracting Authority considers that the Substantial Completion Certificate should not be issued.
- (e) Within five Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 24.4(d), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Minor Deficiencies or Seasonal Works exist, and to issue to Contracting Authority and to Project Co either:
  - (i) the Substantial Completion Certificate confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List and Seasonal Works List (if applicable) in accordance with Section 24.9; or

- (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (f) Where the Independent Certifier has issued a report in accordance with Section 24.4(e)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, and for each subsequent application for Substantial Completion, Project Co shall submit a new 10-Day Notice and a new Substantial Completion Notice and the process described in Sections 24.4(b) to (f), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

- (g) In the event that the Substantial Completion Certificate has not been issued within 30 days after the delivery of a 10-Day Notice or the delivery of a Substantial Completion Notice, such 10-Day Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new 10-Day Notice in order to initiate a new application for Substantial Completion.
- (h) For greater certainty, the Independent Certifier's decision to issue the IC Substantial Completion Deliverables Confirmation shall not limit or otherwise affect (i) any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or (ii) the opinion of Contracting Authority or the determination of the Independent Certifier as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied pursuant to Section 24.4(d) and Section 24.4(e) respectively.
- (i) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

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- (j) Project Co shall provide As-Built Drawings, Record Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than the Substantial Completion Date. To the extent the As-Built Drawings and Record Drawings are not provided prior to the Substantial Completion Date, the failure to deliver the As-Built Drawings and Record Drawings shall be a Minor Deficiency and subject to the holdback set out in Section 24.9(a).
- (k) The submission of the Substantial Completion Notice by Project Co in accordance with Section 24.4(b) shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Project Agreement, arising prior to the submission of the Substantial Completion Notice, except:
- (i) without prejudice to specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) arising prior to the submission of the Substantial Completion Notice and still unsettled; and
  - (ii) any claim which could not reasonably have been known to Project Co or a Project Co Party at such time following due diligence.

#### **24.5 Operation and Maintenance Manuals**

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

#### **24.6 Intentionally Deleted**

#### **24.7 Contracting Authority Commissioning**

- (a) The Parties acknowledge that the Contracting Authority Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give Contracting Authority and other Province Persons full access to the Site and the Expansion Infrastructure and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable Contracting Authority and other Province Persons to undertake any Contracting Authority Commissioning in accordance with the Final Commissioning Program. Contracting Authority shall comply, and shall ensure that all other Province Persons comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Works in performing the Contracting Authority Commissioning.
- (b) Contracting Authority acknowledges that, during the Contracting Authority Commissioning Period, Project Co and each Subcontractor will be active on the Expansion Infrastructure in the completion and rectification of Minor Deficiencies and Seasonal Works and the completion of Project Co Commissioning and Seasonal

Works, and Contracting Authority shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.

- (c) Project Co acknowledges that, prior to and during the Contracting Authority Commissioning Period, Project Co and each Subcontractor shall cooperate with Contracting Authority and all other Province Persons and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities are able to be completed in the timeframe for completion set out in the Final Commissioning Program.

#### 24.8 Countdown Notice and Substantial Completion Deliverables

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) In accordance with Section 13.4(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within 15 Business Days of the Independent Certifier’s receipt of the Countdown Notice in accordance with Section 24.8(a), the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority a list of deliverables (the “**Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the Substantial Completion Notice to be submitted by Project Co pursuant to Section 24.4(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion and to support Project Co’s opinion that the conditions for issuance of the Substantial Completion Certificate have been satisfied (collectively, the “**Substantial Completion Deliverables**”).
- (e) From time to time until the date that is 60 days prior to the Anticipated Substantial Completion Date, the Independent Certifier, in consultation with Project Co and Contracting Authority, may amend the Substantial Completion Deliverables List, including to set out any additional Substantial Completion Deliverables not identified in the Substantial Completion Deliverables List pursuant to Section 24.8(d). Each amended Substantial Completion Deliverables List shall, following its preparation, be



deemed to be the Substantial Completion Deliverables List for the purposes of this Project Agreement and be promptly delivered to Project Co and Contracting Authority.

- (f) For greater certainty, nothing in Section 24.8(d) or Section 24.8(e) limits or otherwise affects any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the Substantial Completion Notice pursuant to Section 24.4(b).

#### 24.9 Minor Deficiencies and Seasonal Works

- (a) In the event that any Minor Deficiencies or Seasonal Works exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare:

- (i) a list of all Minor Deficiencies (the “**Minor Deficiencies List**”); and
- (ii) a list of all Seasonal Works (the “**Seasonal Works List**”),

identified at that time and an estimate of the cost for Contracting Authority, and the time for Project Co, to complete and rectify such Minor Deficiencies and to complete the Seasonal Works.

- (b) Contracting Authority may withhold from the Substantial Completion Payment:

- (i) a holdback amount that is equal to **[REDACTED]**% of the amount estimated by the Independent Certifier for Contracting Authority to complete and rectify all of the Minor Deficiencies identified in the Minor Deficiencies List (the “**Completion Holdback**”); and
- (ii) a holdback amount that is equal to **[REDACTED]**% of the amount estimated by the Independent Certifier for Contracting Authority to complete all of the Seasonal Works identified in the Seasonal Works List (the “**Seasonal Works Holdback**”)

which holdbacks shall be held in an interest bearing account.

- (c) The Minor Deficiencies List and the Seasonal Works List will contain the schedule for the completion and rectification of each Minor Deficiency and the completion of the Seasonal Works, respectively, before the expiry of each associated Minor Deficiency Completion Period and the expiry of the Seasonal Works Completion Period. Project Co shall schedule the completion and rectification of Minor Deficiencies and Seasonal Works so as to minimize, to the greatest extent reasonably possible, any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Expansion Infrastructure or the relevant portion thereof, or disruption of the Works or of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the

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Contracting Authority Activities and the Other Works, and otherwise in accordance with the Traffic Management Plan.

- (d) The Independent Certifier must prepare the Minor Deficiencies List and the Seasonal Works List in relation to the Substantial Completion Notice as soon as reasonably practicable and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies or Seasonal Works
- (e) With regards to:
- (i) the Minor Deficiencies List, by no later than the last to occur of (A) the date that is 20 Business Days before the expiry of the last Minor Deficiency Completion Period, and (B) the anticipated date for when all Minor Deficiencies shall be completed and rectified after the expiry of the last Minor Deficiency Completion Period set out in any notice delivered by Project Co to Contracting Authority in accordance with Section 24.10(c); and
  - (ii) the Seasonal Works List, by no later than 20 Business Days prior to the Anticipated Final Completion Date,

Contracting Authority may by giving notice to the Independent Certifier and Project Co require the Independent Certifier to amend, in consultation with and being informed by the respective views of Project Co and Contracting Authority, each of the Minor Deficiencies List and the Seasonal Works List, as the case may be, on one occasion to include a list of any and all Minor Deficiencies and Seasonal Works, as applicable, that were identified after the preparation of, or not included in, the Minor Deficiencies List or the Seasonal Works List, as applicable, pursuant to Section 24.9(a). The Independent Certifier shall prepare the amended Minor Deficiencies List and the Seasonal Works List, as the case may be, as soon as reasonably practicable and, in any event, within 10 Business Days of such notice given by Contracting Authority. The amended Minor Deficiencies List and the Seasonal Works List shall, in each case following its preparation, be deemed to be the Minor Deficiencies List or the Seasonal Works List, as the case may be, for the purposes of this Project Agreement, including, without limitation, for the purposes of Sections 24.9 to 24.11 inclusive. The amount of the Completion Holdback and the Seasonal Works Holdback, as applicable, shall not be affected by the amended Minor Deficiencies List or the Seasonal Works List.

- (f) Where the Minor Deficiencies List or the Seasonal Works List is required to be amended pursuant to Section 24.9(e), the Independent Certifier shall specify a completion and rectification time for any newly added Minor Deficiencies and Seasonal Works that is no greater than 10 Business Days from the date of the issuance of such amended Minor Deficiencies List or Seasonal Works List, as applicable, or such longer time period as agreed by the Parties.

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

#### **24.10 Rectification of Minor Deficiencies, Completion of Seasonal Works**

- (a) Project Co shall, in consultation with the Contracting Authority Representative and so as to minimize, to the greatest extent reasonably possible, any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Expansion Infrastructure or any portion thereof or disruption of the Works or of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Contracting Authority Activities and the Other Works, and otherwise in accordance with the Traffic Management Plan:
- (i) complete and rectify all Minor Deficiencies:
    - (A) within 90 days of the issuance of the Minor Deficiencies List pursuant to Section 24.9(a) for all Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier; or
    - (B) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List; and
  - (ii) complete all Seasonal Works no later than 12 months following the Substantial Completion Date.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies and the completion of the Seasonal Works before the expiry of the Minor Deficiency Completion periods and the Seasonal Works Completion Period respectively may require work outside of normal working hours in order to accommodate the efficient operation of the Expansion Infrastructure or any portion thereof and to ensure compliance with the Traffic Management Plan.
- (c) If at any time Project Co becomes aware that it will be unable to complete and rectify all Minor Deficiencies before the expiry of the last Minor Deficiency Completion Period, then, without limiting or prejudice to any right of Contracting Authority (including pursuant to Section 24.11(a)) or obligations or liability of Project Co under this Project Agreement whatsoever, Project Co shall promptly deliver notice to Contracting Authority advising Contracting Authority of such delay and providing an anticipated date for when all Minor Deficiencies shall be completed and rectified after the expiry of the last Minor Deficiency Completion Period. For greater certainty, no such notice shall vary, amend or otherwise modify any Minor Deficiency Completion Period.

**24.11 Failure to Rectify Minor Deficiencies and Complete Seasonal Works and Release of Works Holdbacks**

- (a) If Project Co fails to complete and rectify any Minor Deficiency before the expiry of the associated Minor Deficiency Completion Period or to complete the Seasonal Works before the expiry of the Seasonal Works Completion Period, then upon delivery of not less than five Business Days prior notice to Project Co, Contracting Authority may, in its discretion, engage others to perform the work necessary to complete and rectify such Minor Deficiency or complete such Seasonal Works, at the risk and cost of Project Co, and, in such an event, Contracting Authority may deduct such cost from the Completion Holdback or the Seasonal Works Holdback, as the case may be, and interest accrued thereon.
- (b) Upon the later of (A) the date of the completion and rectification of [REDACTED]% of the Minor Deficiencies set out in the Minor Deficiencies List, and (B) the date the value to complete and rectify the Minor Deficiencies as set out in the Minor Deficiencies List that have been completed and rectified is greater than or equal to an amount that is [REDACTED]% of the total value to complete and rectify all of the Minor Deficiencies as set out in the Minor Deficiencies List, all as certified by the Independent Certifier (taking into consideration Contracting Authority's opinion as to whether such Minor Deficiencies have been completed and rectified), then Project Co may request in writing that Contracting Authority release to Project Co an amount equal to [REDACTED]% of the amount of the Completion Holdback (without any interest accrued thereon but with applicable HST) less any amounts deducted in accordance with Section 24.11(a) in respect of any completed Minor Deficiencies. Contracting Authority shall release such amount to Project Co within two Business Days of Contracting Authority's receipt of such written request. The amount of the Completion Holdback released shall be less the amount of the Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback shall be paid by Contracting Authority in accordance with Schedule 19 – Payment Procedures.
- (c) Upon the later of (A) the date of the completion and rectification of [REDACTED]% of the Minor Deficiencies set out in the Minor Deficiencies List, and (B) the date the value to complete and rectify the Minor Deficiencies as set out in the Minor Deficiencies List that have been completed and rectified is greater than or equal to an amount that is [REDACTED]% of the total value to complete and rectify all of the Minor Deficiencies as set out in the Minor Deficiencies List, all as certified by the Independent Certifier (taking into consideration Contracting Authority's opinion as to whether such Minor Deficiencies have been completed and rectified), then Project Co may request in writing that Contracting Authority release to Project Co an amount equal to [REDACTED]% of the amount of the Completion Holdback initially withheld from the Substantial Completion Payment pursuant to Section 24.9(b)(i) (without any interest accrued thereon but with applicable HST) less any amounts deducted in accordance with Section 24.11(a) in respect of any completed Minor Deficiencies. Contracting Authority shall release such amount to Project Co within two Business Days of Contracting Authority's receipt of such written request.

- (d) When all Minor Deficiencies have been completed and rectified, as certified by the Independent Certifier, taking into consideration Contracting Authority’s opinion as to whether such Minor Deficiencies have been completed and rectified (the “**Minor Deficiencies Certification Date**”), then within two Business Days after the Minor Deficiencies Certification Date, Contracting Authority shall release to Project Co the remaining amounts of the Completion Holdback (together with all interest accrued thereon and applicable HST) less any amounts deducted in accordance with Section 24.11(a). The remaining amount of the Completion Holdback released shall be less the amount of the Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback shall be paid by Contracting Authority in accordance with Schedule 19 – Payment Procedures.
- (e) When all Seasonal Works have been completed, as certified by the Independent Certifier, taking into consideration Contracting Authority’s opinion as to whether such Seasonal Works have been completed (the “**Seasonal Works Certification Date**”), then within two Business Days after the Seasonal Works Certification Date, Contracting Authority shall release to Project Co the amount of the Seasonal Works Holdback (together with all interest accrued thereon and applicable HST), less any amounts deducted in accordance with Section 24.11(a). The amount of the Seasonal Works Holdback released shall be less the amount of the Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback shall be paid by Contracting Authority in accordance with Schedule 19 – Payment Procedures.
- (f) Where Contracting Authority exercises its rights pursuant to Section 24.11(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback or the Seasonal Works Holdback, as applicable, and interest, then Project Co shall promptly reimburse Contracting Authority for all such excess cost after receiving written notice given by Contracting Authority requesting such reimbursement.

#### 24.12 Final Completion Countdown Notice

- (a) Project Co shall deliver a Notice (the “**Final Completion Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Final Completion Date) on which Project Co anticipates that Final Completion will be achieved (the “**Anticipated Final Completion Date**”).
- (b) The Final Completion Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 90 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

**24.13 Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least ten Business Days' Notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative Notice (the "**Final Completion Notice**") upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies and the completion of the Seasonal Works, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied. The Final Completion Notice shall also include the following documentation:
- (i) Project Co's written request for release of the Completion Holdback or the Seasonal Works Holdback, as applicable, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;
  - (ii) Project Co's Statutory Declaration CCDC 9A (2001);
  - (iii) Project Co's WSIB Certificate of Clearance; and
  - (iv) a written statement that the Works have been performed to the requirements of the Ancillary Documents, itemizing approved changes in the Works, the Independent Certifier's written instructions, and modifications required by Governmental Authorities.
- (c) Contracting Authority shall, within five Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24.13(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
- (i) the Final Completion Certificate, confirming the date of issue as the Final Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.

- (e) Where the Independent Certifier has issued a report in accordance with Section 24.13(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.13(c) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier’s decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) The submission of the Final Completion Notice by Project Co in accordance with Section 24.13(b), shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority, arising prior to the submission of the Final Completion Notice, except:
- (i) without prejudice to specific Notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to the Final Completion Notice and still unsettled; and
  - (ii) any claim which could not reasonably have been known to Project Co or a Project Co Party at such time following due diligence.

#### **24.14 Effect of Certificates/Use**

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate and any taking over or use by Contracting Authority of any part of the Expansion Infrastructure under the terms of this Project Agreement, shall, in no way:
- (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List or Seasonal Works List or of the amended Minor Deficiencies List or amended Seasonal Works List described in Section 24.9(e);  
or

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

#### 24.15 Intentionally Deleted

#### 24.16 MILESTONE PAYMENTS

##### 24.16A.1 Milestone Payment Completion Countdown Notice

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

##### 24.16A.2 Certification of Milestone Payments

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



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- (iii) include all construction progress reports relating to the applicable requirements for Milestone Payment Completion for the First Milestone Payment and the Second Milestone Payment, as applicable, certified by the Lenders' Consultant.
  - (c) Project Co shall, and shall cause the Lenders' Consultant to, co-operate with the Independent Certifier to permit the Independent Certifier to verify the Lenders' Consultant's construction progress reports.
  - (d) Contracting Authority shall, within five Business Days after receipt of each Milestone Payment Completion Notice, provide Project Co and the Independent Certifier with Contracting Authority's opinion as to whether Project Co has satisfied the applicable requirement for Milestone Payment Completion for the First Milestone Payment or the Second Milestone Payment, as applicable, and, if applicable, any reasons as to why it considered that Project Co has not satisfied the applicable requirements for Milestone Payment Completion for the First Milestone Payment or Second Milestone Payment, as applicable.
  - (e) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24.16A.2(d), the Parties shall cause the Independent Certifier to determine whether the applicable requirements for Milestone Payment Completion for the First Milestone Payment or the Second Milestone Payment, as applicable, have been met, having regard to the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and Project Co either:
    - (i) a notice that the requirements for Milestone Payment Completion for the First Milestone Payment or the Second Milestone Payment, as applicable, have been met (the "**First Milestone Payment Completion Date**" or "**Second Milestone Payment Completion Date**", as applicable); or
    - (ii) a report setting out the percentage of the Funded Capital Costs that the Independent Certifier considers remains to be completed in order to satisfy the applicable requirements for Milestone Payment Completion for the First Milestone Payment or the Second Milestone Payment, as applicable.
  - (f) Where the Independent Certifier has issued a report in accordance with Section 24.16A.2(e)(ii), Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and Contracting Authority with a letter which acknowledges the percentage of the Funded Capital Costs that remains to be completed (as set out in the Independent Certifier's report) to achieve the applicable requirements for Milestone Payment Completion and includes a schedule for completing such Work. Upon completion thereof, Project Co may give a further Milestone Payment Completion Notice and then Sections 24.16A.2(d) to (f), inclusive, shall be repeated until the Independent Certifier issues a notice pursuant to Section 24.16A.2(e)(i).
  - (g) Where the Independent Certifier has issued a notice in accordance with Section 24.16A.2(e)(i), Contracting Authority shall make the First Milestone Payment or the Second Milestone Payment on the applicable Milestone Payment Date.

**25. HUMAN RESOURCES****25.1 Admittance of Personnel, Security and Safety**

- (a) Contracting Authority shall have the right to order the removal from the Lands or the Expansion 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 Contracting Authority Activities or who, in the reasonable opinion of Contracting Authority is not a fit and proper person to be at or on the Site, the Lands and/or the Expansion 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 at or on the Site, the Lands and/or the Expansion Infrastructure.
- (b) Any decision of Contracting Authority made pursuant to this Section 25.1 shall be final and conclusive.
- (c) Any action taken under this Section 25.1 shall promptly be confirmed by Contracting Authority to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

**25.2 Notification of Convictions**

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is immediately notified in the event that Project Co or any Project Co Party becomes aware that any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Works has been convicted of a Relevant Conviction. 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 25.2.

**25.3 Staff Competency**

- (a) Project Co shall ensure that:
  - (i) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Works with the requisite level of skill and experience to perform the Works in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to complete the Works in accordance with the Baseline Works Schedule;
  - (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of

the Works receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirements; and

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

#### **25.4 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 Expansion Infrastructure Users, or which Contracting Authority considers may potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the Province of Ontario's highway system, so as to negatively affect public perception of that system or undertaking. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise Contracting Authority in writing of the outcome of any disciplinary action taken in respect of such person.

#### **25.5 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.

#### **25.6 Management Organizations**

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

**26. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS****26.1 Exercise of Remedial Rights**

(a) Contracting Authority may exercise all rights set out in this Article 26 at any time and from time to time if:

(i) Contracting Authority, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:

(A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any Expansion Infrastructure User or Province Person; or

(B) does or can reasonably be expected to materially prejudice the performance of any Contracting Authority Activities; or

(C) may potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the Province of Ontario's highway system, so as to negatively affect public perception of that system or undertaking,

provided that:

(D) in respect of a breach by Project Co of any obligation under this Project Agreement or any act or omission on the part of Project Co or any Project Co Party which can reasonably be expected to cause any of the consequences set out in Section 26.1(a)(i)(A), Contracting Authority shall not exercise its rights under this Article 26 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Section 26.1(a)(i)(A) actually occur; and

(E) in respect of Section 26.1(a)(i)(C), Contracting Authority shall not exercise its rights under this Article 26 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;

- (ii) Project Co 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 or OHSAS 18001 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); or
- (iii) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.25(a) or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.25(b).

## 26.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, Contracting Authority may exercise all of the rights set out in this Article 26 at any time and from time to time if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

## 26.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Article 35 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 26.1 or 26.2, Contracting Authority may, by written Notice, require Project Co to take such steps as the Contracting Authority, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of any Subcontractor 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 26.3(a) and either:
  - (i) Project Co does not either confirm, within 5 Business Days of such Notice or such shorter period as is appropriate in the case of an Emergency 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 26.3, in the event of an Emergency, the Notice under Section 26.3(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 26.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

#### 26.4 Costs and Expenses

- (a) Subject to Contracting Authority's obligations pursuant to Sections 26.5 and 26.6:
- (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Article 26; and
- (ii) Project Co shall reimburse Contracting Authority for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Article 26, 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 Article 26.

#### 26.5 Reimbursement Events

- (a) In this Section 26.5, a "**Reimbursement Event**" means:
- (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by Contracting Authority or a Contracting Authority Party; or
- (ii) an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.
- (b) If Contracting Authority either takes steps itself or requires Project Co to take steps in accordance with this Article 26 as a result of a Reimbursement Event:
- (i) Contracting Authority shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Article 26 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and

- (ii) Contracting Authority shall bear all costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Article 26.

## **26.6 Reimbursement if Improper Exercise of Rights**

- (a) If Contracting Authority exercises its rights pursuant to this Article 26, but Contracting Authority was not entitled to do so, Contracting Authority shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Contracting Authority issued as a result of Contracting Authority having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Contracting Authority is entitled to exercise its rights pursuant to this Article 26 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.

## **27. RECORDS, INFORMATION AND AUDIT**

### **27.1 Records Provisions**

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

### **27.2 Information and General Audit Rights**

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to Contracting Authority all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as Contracting Authority may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Contracting Authority, and shall require each Subcontractor, including the Construction Contractor, to provide to Contracting Authority (at Contracting Authority's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 27.2(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 and the Expansion 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 and the Expansion Infrastructure, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify Contracting Authority of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to Contracting Authority hereunder, shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless Contracting Authority and Project Co otherwise agree. Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Contracting Authority monitoring and auditing such parts of the Works, including providing them with access and copies (at Contracting Authority's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of Contracting Authority's costs for the inspections, audits and monitoring shall be borne by Contracting Authority.
- (f) In conducting an audit of Project Co under Section 27.2(e) or as otherwise provided under this Project Agreement, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Contracting Authority's reasonable cost) of all books and records of Project Co required to be provided to or available to Contracting Authority hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Contracting Authority where applicable. At the reasonable request of Contracting Authority's auditors, Project Co shall provide such information, reports, documents and records as



Contracting Authority's auditors may reasonably require, other than Sensitive Information.

- (g) Contracting Authority's rights pursuant to this Section 27.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) Contracting Authority's rights pursuant to this Section 27.2 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 27.2 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.

### **27.3 Lenders' Consultant Reports**

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 5(j) of Schedule 4 – Lenders' Direct Agreement, the Lenders' Consultant to provide Contracting Authority a copy of any written assessment or report of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent.

## **28. COMMUNICATIONS**

### **28.1 Communications**

- (a) Each of the Parties shall comply with Schedule 18 – Communications.

## **29. CHANGES IN LAW**

### **29.1 Performance after Change in Law**

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

### **29.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
  - (i) either Party may give Notice to the other of the need for a Variation as a result of such Works Change in Law;
  - (ii) the Parties shall meet within ten Business Days of such Notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within ten Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in

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

- (iii) Contracting Authority shall, within ten Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
  - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

### 29.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works in accordance with Schedule 22 – Variation Procedure. Any such compensation shall be calculated in accordance with this Section 29.3.
- (b) On the occurrence of a Relevant Change in Law:
  - (i) either Party may give Notice to the other of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within ten Business Days of such Notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within ten Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

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- (iii) Contracting Authority shall, within ten Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
- (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
  - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
    - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
    - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
  - (F) any entitlement to compensation payable shall be in accordance with this Section 29.3, and any calculation of compensation shall take into consideration, inter alia:
    - (I) any failure by a Party to comply with Section 29.3(b)(iii)(E);
    - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
    - (III) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any

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

- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Article 31 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 29.3, and Article 32 shall be construed accordingly.

#### 29.4 Pandemic and Epidemic Change in Law

- (a) Subject to Section 29.4(d) on the occurrence of a Pandemic and Epidemic Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works (“**Pandemic and Epidemic Change in Law Compensation**”). Any such compensation shall be calculated in accordance with this Section 29.4.

- (b) On the occurrence of a Pandemic and Epidemic Change in Law:

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

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- (B) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Pandemic and Epidemic Change in Law;
- (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
- (D) without limiting any requirement of this Project Agreement, including Schedule 22 – Variation Procedure, Project Co shall provide Contracting Authority with any evidence and proper documentation Contracting Authority may reasonably require in order to assess the reasonableness of the Pandemic and Epidemic Change in Law Compensation. The Parties agree that evidence and proper documentation shall include;
- (I) proof of the Pandemic and Epidemic Change in Law;
  - (II) any proposed changes to the critical path of the Works;
  - (III) detailed information quantifying the change in costs incurred or to be incurred by Project Co and its Subcontractors in performing the Works related to the Pandemic and Epidemic Change in Law, including information on the financial impact of the Pandemic and Epidemic Change in Law on Project Co and its Subcontractors, invoices, proof of payments, and information setting out overhead, labour rates, unit rates, and other prices and quantities for materials, products, supplies, equipment, services, facilities and transportation and any other Direct Cost described in Appendix A of Schedule 22 – Variation Procedure; and
  - (IV) information confirming any amounts described in Section 29.4(b)(iii)(G)(III) received or that will or are likely to be received by Project Co and its Subcontractors.
- (E) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Pandemic and Epidemic Change in Law as soon as reasonably practicable;
- (F) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement;
- (I) use commercially reasonable efforts to mitigate the adverse effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Pandemic and Epidemic Change in Law; and
  - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Pandemic and Epidemic

Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Pandemic and Epidemic Change in Law; and

- (G) any entitlement to Pandemic and Epidemic Change in Law Compensation payable shall be in accordance with this Section 29.4, and any calculation of such compensation shall take into consideration, inter alia:
- (I) any failure by a Party to comply with Section 29.4(b)(iii)(D) or Section 29.4(b)(iii)(F);
  - (II) any increase or decrease in its costs resulting from such Pandemic and Epidemic Change in Law; and
  - (III) any amount which Project Co or a Subcontractor:
    - (1) recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement), which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy; or
    - (2) receives as financial relief or support from a Governmental Authority.
- (c) Project Co shall not be entitled to any payment or compensation or, except as expressly provided in Section 31 or otherwise in this Project Agreement, relief in respect of any Pandemic and Epidemic Change in Law, or the consequences thereof, other than in accordance with this Section 29.4, and Section 32 shall be construed accordingly.
- (d) Project Co shall not be entitled to any relief under this Section 29.4 for a Pandemic and Epidemic Supply Chain Delay that may result from a Pandemic and Epidemic Change in Law. Any relief or compensation for Project Co for any Pandemic and Epidemic Supply Chain Delay shall be addressed under Section 33 of this Project Agreement.

## **30. VARIATIONS**

### **30.1 Variation Procedure**

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of Contracting Authority to Project Co or any Project Co Party results in a

variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.

- (c) Without limiting Project Co's obligations pursuant to Section 11.10(a) and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, or shall otherwise 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.

### 30.2 Innovation and Value Engineering

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

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- (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
    - (vii) include such other information and documentation as may be reasonably requested by Contracting Authority to fully evaluate and consider the Innovation Proposal.
  - (e) Contracting Authority shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
    - (i) the Innovation Proposal affects the quality of the Works, the Expansion Infrastructure, or the likelihood of successful completion of the Works;
    - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the Expansion Infrastructure or the performance of the Contracting Authority Activities;
    - (iii) the Innovation Proposal will interfere with the relationship between Contracting Authority and third parties;
    - (iv) the financial strength of Project Co is sufficient to deliver the changed Works;
    - (v) the residual value of the Lands or Expansion Infrastructure is affected;
    - (vi) the Innovation Proposal materially affects the risks or costs to which Contracting Authority is exposed; or
    - (vii) any other matter Contracting Authority considers relevant.
  - (f) Contracting Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
  - (g) Contracting Authority may, in its sole discretion, accept or reject any Innovation Proposal.
  - (h) If Contracting Authority accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
  - (i) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and Contracting Authority, and Contracting Authority's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment.



- (j) If an Innovation Proposal causes or will cause the costs of Contracting Authority to decrease, the net savings in the costs of Contracting Authority will be shared:
- (i) equally by Project Co and Contracting Authority following the implementation of the Innovation Proposal until the Termination Date; and
  - (ii) thereafter, Contracting Authority shall be entitled to the full benefit of the net savings in costs (if applicable),

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

### 31. DELAY EVENTS

#### 31.1 Definition

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:
- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
  - (ii) any breach by Contracting Authority of any of Contracting Authority's obligations under this Project Agreement (including, subject to Section 16.7 and 31.2(o), any delay by Contracting Authority in giving access to the Lands pursuant to Section 16.1(a), any obstruction of the rights afforded to Project Co under Section 16.1(a) or any delay by Contracting Authority in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
  - (iii) an opening up of the Works pursuant to Section 20.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works;
  - (iv) any Contracting Authority Contamination pursuant to Section 18.2(b);
  - (v) any Contracting Authority Items of Interest or Value pursuant to Section 18.3(c);
  - (vi) any Contracting Authority Utility Infrastructure pursuant to Section 18.4(b);
  - (vii) any Contracting Authority Species-at-Risk pursuant to Section 18.5(b);

- (viii) subject to the provisions of Section 11.12, the execution of Additional Works on the Lands by Additional Contractors;
- (ix) a requirement pursuant to Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of Contracting Authority during the pendency of a Dispute, to the extent that the Dispute is subsequently determined in Project Co's favour;
- (x) a requirement pursuant to Section 17.2(d) for Project Co to perform obligations under an Encumbrance which performance imposes costs or delays to or in the performance of the Works;
- (xi) an event of Force Majeure;
- (xii) a Relief Event;
- (xiii) a Relevant Change in Law;
- (xiv) any change to the terms, conditions or requirements of the Environmental Approvals, except in each case to the extent resulting from any change by Project Co in the design of the Expansion Infrastructure or from any other act or omission on the part of Project Co;
- (xv) a Pandemic and Epidemic Change in Law;
- (xvi) a Protest Action subject to and in accordance with Section 11.13(e);
- (xvii) subject to compliance by Project Co with the provisions of Section 11.18, damage, costs or delays from the execution or performance of Utility Relocation Works; or
- (xviii) the Utility Relocation Works not being completed by the respective Utility Relocation Works Completion Dates.

### 31.2 Consequences of a Delay Event

- (a) Project Co shall provide written Notice to the Contracting Authority Representative, the CDB and the Independent Certifier within 10 Business Days of becoming aware of the occurrence of any event or circumstance described in Section 31.1(a)(ii), (iii), (iv), (v), (vi), (vii), (viii), (x), (xiv), (xv), (xvi), (xvii) or (xviii) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 31.2(f) as a Delay Event.
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 31.2(a), provide further written details to the Contracting Authority Representative, the CDB and the Independent Certifier which shall include:

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- (i) identification of the category of Delay Event on which Project Co's future claim for relief would be based if such event or circumstances were to form the basis for a claim for relief as a Delay Event;
  - (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 31.2(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 31.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date if such event or circumstances forms the basis of a future claim by Project Co for relief as a Delay Event; 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 relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event.
- (c) If Project Co does not provide further written details to the Contracting Authority Representative, the CDB and the Independent Certifier as required under Section 31.2(b) within the 10-Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and Contracting Authority shall not be obligated to consider, the Notice given under Section 31.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 31. Project Co, at its option, may submit a new, currently dated Notice which complies with the provisions of Section 31.2(a) for the same event or circumstance which gave rise to the previous, unsubstantiated Notice, and the provisions of this Section 31 shall apply to any new Notice, *mutatis mutandis*. Project Co acknowledges and agrees that Contracting Authority, in determining Project Co's entitlement to an extension of time pursuant to this Section 31 and without limiting any other right of Contracting Authority under this Project 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 31.2(a), and
  - (ii) Project Co submitting any new Notice pursuant to Section 31.2(a) in respect of that event or occurrence.
- (d) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 31.2(a), Project Co shall submit further particulars

- based on such information to the Contracting Authority Representative, the CDB and the Independent Certifier.
- (e) The Contracting Authority Representative shall, after receipt of written details under Section 31.2(b) or of further particulars under Section 31.2(c), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such Notice and afford the Contracting Authority Representative, the CDB and the Independent Certifier reasonable facilities for their investigations, including, without limitation, on-site inspection.
- (f) In addition to complying with its obligations under Sections 31.2(a) and 31.2(b), Project Co shall provide written Notice to the Contracting Authority Representative, the CDB and the Independent Certifier within 10 Business Days of becoming aware that an event or circumstance has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of a Delay Event. Project Co shall, within 15 Business Days after such notification, provide further written details of the Delay Event to the Contracting Authority Representative, the CDB and the Independent Certifier including, if and as applicable, to supplement the information given in Sections 31.2(a), 31.2(d) and 31.2(e), to substantiate or support Project Co's claim which details shall include to the extent not previously provided:
- (i) a statement of which Delay Event upon which the claim is based;
  - (ii) details of the circumstances from which the Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, including a critical path analysis of the event or circumstance indicating the impact upon the Scheduled Substantial Completion Date if such event or circumstance were to become a Delay Event; and;
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (g) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 31.2(f), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Certifier.
- (h) The Contracting Authority Representative shall, after receipt of written details under Section 31.2(f), or of further particulars under Section 31.2(g), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co

shall afford the Contracting Authority Representative, the CDB and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.

(i) Subject to the provisions of this Section 31, the Contracting Authority Representative shall allow Project Co an extension of time equal to the critical path delay to the Scheduled Substantial Completion Date or Scheduled Final Completion Date caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:

- (i) the date of receipt by the Contracting Authority Representative of Project Co's Notice given in accordance with Section 31.2(f) and the date of receipt of adequate further particulars (if such are required under Section 31.2(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 31.2(g) and the date of receipt of any further particulars (if such are required under Section 31.2(h)), whichever is later.

(j) **Intentionally Deleted.**

(k) If:

- (i) the Contracting Authority Representative declines to fix a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date, as applicable;
- (ii) Project Co considers that a different Scheduled Substantial Completion Date or Scheduled Final Completion Date should be fixed; or
- (iii) there is a dispute as to whether a Delay Event has occurred,

then Project Co shall be entitled to refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

(l) To the extent that Project Co does not comply with its obligations under Sections 31.2(a) - (h), inclusive, and subject to Section 31.2(c), such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 31.

(m) If the Works are behind schedule for a reason other than a Delay Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule, Project Co shall use all reasonable measures to bring the Works back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and

- equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary. Project Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by Project Co and/or the Project Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension to the Scheduled Substantial Completion Date..
- (n) Where there are concurrent delays, some of which are caused by Contracting Authority or others for whom Contracting Authority is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to an extension in the Scheduled Substantial Completion Date, or additional compensation to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Substantial Completion Date where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (o) Subject to Sections 11.18(b) and 11.18(c), Contracting Authority shall provide Project Co with access to and use of the Lands and the Expansion Infrastructure as required pursuant to Article 16 of this Project Agreement in a manner consistent with the Baseline Works Schedule and in accordance with the notification requirements and restrictions set out in the Project Agreement, provided that Project Co agrees that the inability of Contracting Authority to provide Project Co with access to an area for construction activities not on the critical path for reasons set out in Sections 11.18(b) and 11.18(c) will not result in the occurrence of a Delay Event (and, for greater certainty, there shall not be a resulting change to the Scheduled Substantial Completion Date) or a Compensation Event (and, for certainty, there shall not be any resulting change to the Guaranteed Price).
- (p) In no event shall the extension of time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event.

### 31.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.

- (b) To the extent that Project Co does not comply with its obligations under this Section 31.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 31.

## 32. COMPENSATION EVENTS

### 32.1 Definition

- (a) For the purposes of this Project Agreement, “**Compensation Event**” means any event referred to in Sections 31.1(a)(ii) (subject to Section 31.2(o)), (iii), (iv), (v), (vi) (but only to the extent Project Co is not compensated therefor pursuant to Section 21.3), (vii), (viii), (ix), (x), (xiv), (xvii) and (xviii) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

### 32.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 32. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
- (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 31.1(a)(i);
  - (ii) Section 34, in the case of a Delay Event referred to in Section 31.1(a)(xi);
  - (iii) Section 33, in the case of a Delay Event referred to in Section 31.1(a)(xii);
  - (iv) Section 29, in the case of a Delay Event referred to in Section 31.1(a)(xiii);
  - (v) Section 29.4 in the case of a Delay Event referred to in Section 31.1(a)(xv); and
  - (vi) Section 11.13(e)(ii), in the case of a Delay Event referred to in Section 31.1(a)(xvi).
- (b) Subject to Sections 32.2(d), 32.3, 32.4 and 32.5, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better or no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by Contracting Authority to Project Co. Project Co shall promptly provide the Contracting Authority Representative with any information the Contracting Authority Representative may require in order to determine the amount of such compensation.
- (c) If Contracting Authority is required to compensate Project Co pursuant to this Section 32.2, then Contracting Authority may either pay such compensation as a lump sum

- payment or payments at times and in a manner to be agreed with Project Co, acting reasonably.
- (d) To the extent that Project Co does not comply with its obligations under Sections 31.2(a) - (h), inclusive, and subject to Section 31.2(c), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 32.
- (e) If an event listed in Section 31.1(a) to Section 31.1(a)(xviii) caused Project Co to be delayed as of the time of the applicable Scheduled Milestone Payment Completion Date, when delay is measured in accordance with Section 31.2, and such delay resulted in Project Co failing to achieve Milestone Payment Completion for any Milestone Payment, and to the extent that such failure was not caused, or contributed to, by Project Co or any Project Co Party,
- (i) in the case of the First Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the First Milestone Payment arising from the applicable period of delay, provided Project Co has complied with its obligations pursuant to Section 32.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 32.2;
  - (ii) in the case of the Second Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Second Milestone Payment arising from the applicable period of delay, provided Project Co has complied with its obligations pursuant to Section 32.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 32.2 including any amounts already paid pursuant to Section 32.2(e)(i);
  - (iii) all compensation owed to Project Co arising from Sections 32.2(e)(i), and 32.2(e)(ii) shall be calculated as of the applicable Milestone Payment Completion Date and shall be limited to only the compensation set out in Sections 32.2(e)(i), and 32.2(e)(ii); and
  - (iv) any amount payable by Contracting Authority pursuant to Section 32.2(e) shall be payable on the applicable Milestone Payment Completion Date.

### **32.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 32 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 32.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 32.



**32.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 32 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

**32.5 Delivery of Baseline Works Schedule**

- (a) If an event referred to in Sections 31.1(a)(iii), (iv), (v), (vi), (ix) or (xv) occurs after the date that is 128 days following Financial Close, as such date may be extended in accordance with Section 13.2(c), and prior to Contracting Authority assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the Draft Baseline Works Schedule referred to in Section 13.2(b)(i), Project Co shall not be entitled to receive any compensation under this Section 32 in respect of such Compensation Event, unless such Compensation Event is also a Delay Event, in which case Project Co shall be entitled to compensation in an amount equal to the lesser of:
- (i) the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay; and
  - (ii) the compensation which, but for the application of this Section 32.5, Project Co would have been entitled to receive pursuant to Section 32.2(b).

**33. RELIEF EVENTS****33.1 Definition**

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

- (A) has performed its obligations under any applicable Utility Agreement and the relevant Utility Company has failed to meet its obligations thereunder; and
- (B) has made all, and is continuing to make any, commercially reasonable efforts to diligently enforce its legal rights under any applicable Utility Agreement and otherwise cause the Utility Company to perform those works or services;
- (iii) accidental loss or damage to the Works and/or the Expansion Infrastructure or any roads servicing the Lands;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo that is not a Protest Action and that falls short of an event of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the road or highway construction industry (or a significant sector of that industry) in the Province of Ontario;
- (vii) a requirement for Project Co to complete a Betterment pursuant to:
  - (A) a Utility Agreement, subject to compliance by Project Co with the provisions of Section 21.2; or
  - (B) a Utility (Province) Agreement,  
  
which cannot be completed without causing a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date; or
- (viii) 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 Province Person.

### 33.2 Consequences of a Relief Event

- (a) Subject to Section 33.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 37.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that

all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 31.1(a)(xii):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 31; and
  - (ii) in respect of a Relief Event referred to in Section 33.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 33.1(a)(v), 33.1(a)(vi), 33.1(a)(vii) or 33.1(a)(viii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would not have been paid by Project Co to the Senior Lenders.
- (c) If a Relief Event occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 33.2(b)(ii) and 39.
- (d) Subject to Section 39, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 33.

### **33.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 33.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 33.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial Notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial Notice, which Notice shall contain

- such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 33.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
  - (f) If, following the issue of any Notice referred to in Section 33.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

### 33.4 Insured Exposure

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

## 34. FORCE MAJEURE

### 34.1 Definition

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
  - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (ii) nuclear or radioactive contamination of the Works, the Expansion Infrastructure and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;
  - (iii) chemical or biological contamination of the Works, the Expansion Infrastructure and/or the Lands from any event referred to in Section 34.1(a)(i);
  - (iv) pressure waves caused by devices traveling at supersonic speeds; or
  - (v) the discovery of any Species-at-Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

**34.2 Consequences of Force Majeure**

- (a) Subject to Section 34.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 31.1(a)(xi):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 31; and
  - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that accrued in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 34.2(b)(ii) and 39.
- (d) Subject to Section 39, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 34.

**34.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 34.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 34.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial

Notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 34.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any Notice referred to in Section 34.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **34.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 34 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

#### **34.5 Modifications**

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of Contracting Authority and Project Co to reach agreement pursuant to this Section 34.5.

### **35. PROJECT CO DEFAULT**

#### **35.1 Project Co Events of Default**

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
  - (i) the occurrence of any of the following events other than as a consequence of a breach by Contracting Authority of its payment obligations hereunder:

- (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co or 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 of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 35.1(a)(i);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
- (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 35.1(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 35.1(a)(i)(A), (B) or (C) constitute a Project Co Event of Default;

- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the “**Longstop Date**”);
- (iii) Project Co either:
  - (A) failing to deliver a Recovery Works Schedule under Section 13.3(a)(iv)(A);
  - (B) delivering a Recovery Works Schedule under Section 13.3(a)(iv)(A) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
  - (C) delivering a Recovery Works Schedule under Section 13.3(a)(iv)(A) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Sections 13.3(a)(iv) and 13.3(a)(v);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works, the Contracting Authority Activities or the availability of the Expansion Infrastructure to Expansion Infrastructure Users, or that may compromise (1) Contracting Authority’s reputation or integrity or the nature of the Province of Ontario’s highway system, or (2) the ability of Contracting Authority to conduct its business, so as to negatively affect public perception of that system or undertaking, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of Notice of the same from Contracting Authority;
- (v) Project Co committing a breach of Sections 41 or 42;
- (vi) Project Co committing a breach of its obligations under this Project Agreement which has or will have a material adverse effect on the performance of Contracting Authority Activities (other than a breach that is otherwise referred to in Sections 35.1(a)(i) to (v) inclusive or 35.1(a)(vii) to (xvi) inclusive) other than where such breach is a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on



Contracting Authority and the performance of the Contracting Authority Activities;

- (II) put forward, within 5 Business Days of receipt of Notice of such breach from Contracting Authority, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of Notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
  - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (vii) Project Co wholly abandoning the Works for a period which exceeds three Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
  - (viii) Project Co failing to comply with Sections 48.1 or 48.3;
  - (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 48.4;
  - (x) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through Contracting Authority) within 45 days of the earlier of:
    - (A) the registration of such Encumbrance against title to the Site or any part thereof; and
    - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
  - (xi) Project Co failing to pay any sum or sums due to Contracting Authority under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Project Co pursuant to Section 4.11(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a Notice of non-payment from Contracting Authority;
  - (xii) Project Co failing to comply with Section 49;

- (xiii) Project Co failing to comply with Section 8.3 or Schedule 28 – Refinancing;
- (xiv) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and:
  - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xv) Project Co failing to comply with any determination, decision, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xvi) A default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable Notice and cure periods thereunder.

### **35.2 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.

### **35.3 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 35.4, terminate this Project Agreement in its entirety by written Notice having immediate effect, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.
- (b) Notwithstanding Section 35.3(a), on the occurrence of a Project Co Event of Default set out in Section 35.1(a)(i), 35.1(a)(viii) (but only in respect of a breach of Section 48.4(a)) or 35.1(a)(xii), Contracting Authority may, subject to Section 35.4, terminate this Project Agreement in its 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, and to any person specified in the Lenders' Direct Agreement to receive such Notice. The Parties agree that no irreparable harm shall occur if this Project Agreement is terminated by Contracting Authority pursuant to this Section 35.3(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 Project Agreement.

#### 35.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 35.1(a)(i)(B), 35.1(a)(i)(C), 35.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 35.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 35.1(a)(i)(B) or 35.1(a)(i)(C)), 35.1(a)(iii), 35.1(a)(iv), 35.1(a)(v), 35.1(a)(vii), 35.1(a)(viii), 35.1(a)(ix), (where the Project Co Event of Default referred to in Section 35.1(a)(ix) is capable of being remedied), 35.1(a)(xi), 35.1(a)(xiii), 35.1(a)(xiv) (where the Project Co Event of Default referred to in Section 35.1(a)(xiv) is not in respect of insurance), 35.1(a)(xv), or 35.1(a)(xvi), Contracting Authority shall, prior to being entitled to terminate this Project Agreement, give Notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice, and Project Co shall:
- (i) within five Business Days of such Notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the Notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to 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 35.4(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 5 Business Days from receipt of the same within which to notify Project Co that Contracting Authority does not accept such longer period in the plan and schedule and that the 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 35.4(a), occurs and:

- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Contracting Authority and the Contracting Authority Activities or the availability of the Expansion Infrastructure to Expansion Infrastructure Users; or
- (ii) Project Co fails to put forward a plan and schedule pursuant to Section 35.4(a)(i); or
- (iii) such Project Co Event of Default is not remedied within 30 days of such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 35.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 35.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

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

- (d) Notwithstanding that Contracting Authority may give the Notice referred to in Section 35.4(a), and without prejudice to the other rights of Contracting Authority in this Section 35.4, 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 Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 35.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Contracting Authority shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

### **35.5 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 35, including any relevant increased administrative expenses. Contracting Authority shall take commercially reasonable steps to mitigate such costs.

**35.6 No Other Rights to Terminate**

- (a) Contracting Authority shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 35 and 37.

**36. CONTRACTING AUTHORITY DEFAULT****36.1 Contracting Authority Events of Default**

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

- (i) Contracting Authority failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Contracting Authority pursuant to Section 4.11(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:

- (A) in respect of the Substantial Completion Payment or Legislative Holdback, such failure continues for a period of 10 Business Days;
- (B) in respect of the First Milestone Payment or Second Milestone Payment, such failure continues for a period of 30 days; or
- (C) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for a period of 90 days,

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

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

- (A) Contracting Authority shall:
- (I) immediately commence and thereafter diligently continue to remedy the breach and to use commercially reasonable efforts to mitigate any adverse effects on Project Co;

- (II) put forward, within 5 Business Days of receipt of the Notice referred to in this Section 36.1(a)(ii), a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest day shall in any event be within 60 days of such Notice, or, if such breach is not capable of being rectified in such period, then such longer period as is reasonable in the circumstances; and
  - (III) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its remaining Works obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days, provided that, for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”.

### 36.2 Project Co’s Options

- (a) On the occurrence of a Contracting Authority Event of Default and while the same is continuing, Project Co may give Notice to Contracting Authority of the occurrence of such Contracting Authority Event of Default, which Notice will specify the details thereof, and, at Project Co’s option and without prejudice to its other rights and remedies under this Project Agreement, 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 of receipt by Contracting Authority of Notice of the occurrence of such Contracting Authority Event of Default, terminate this Project Agreement in its entirety by Notice in writing having immediate effect.

### 36.3 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 36, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

**36.4 No Other Rights to Terminate**

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

**37. RELIEF EVENT AND NON DEFAULT TERMINATION****37.1 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 33.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

**37.2 Termination for Force Majeure**

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 34.5 within 180 days from the date on which the Party affected gives Notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

**37.3 Termination for Convenience**

- (a) Contracting Authority shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days written Notice to Project Co.
- (b) In the event of Notice being given by Contracting Authority in accordance with this Section 37.3, Contracting Authority shall, at any time before the expiration of such Notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.

**37.4 Automatic Expiry on Expiry Date**

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

**37.5 Termination due to Protest Action**

- (a) If a Protest Action occurs which entitles Project Co to a Delay Event pursuant to Section 31 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 31.2(a), Contracting Authority may, at any time thereafter, terminate this Project Agreement by written Notice to Project Co having immediate effect, provided that the effects of such Protest Action continue during such period.

**38. EFFECT OF TERMINATION****38.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a Notice of termination or termination on the Expiry Date pursuant to Section 37.4, this Section 38 shall apply in respect of such termination.

**38.2 Continued Effect – No Waiver**

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

**38.3 Continuing Performance**

- (a) Subject to any exercise by Contracting Authority of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 38.

**38.4 Effect of Notice of Termination**

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 37.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Contracting Authority as shall not already have been transferred to Contracting Authority pursuant to Section 44.1, Project Co shall transfer to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by Contracting



Authority), such part of the Works and Expansion Infrastructure as shall have been constructed and such items of the plant 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 38.4(a)(i)(B)) on or near to the Lands shall remain available to Contracting Authority for the purposes of completing the Works; and
  - (B) all construction plant and equipment shall remain available to Contracting Authority for the purposes of completing the Works, subject to payment by Contracting Authority of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Expansion Infrastructure;
  - (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 44.1 or Section 38.4(a)(i), Project Co shall hand over to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by Contracting Authority), the Expansion Infrastructure together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works and all facilities and equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
  - (iv) if Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Design and Construction Contract), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Works or to protect the interests of Project Co, shall be novated or assigned to Contracting Authority or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of the Design and Construction Contract with the Construction Contractor shall be made by Contracting Authority pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;

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

### **38.5 Ownership of Information**

- (a) Subject to Section 40, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Works accumulated over the course of the Project Term shall be the property of Contracting Authority and upon termination of this Project Agreement shall be provided or returned to Contracting Authority, as applicable, in electronic format acceptable to Contracting Authority, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

### **38.6 Provision in Subcontracts**

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that Contracting Authority shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 38.

**38.7 Transitional Arrangements**

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall:
- (i) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to Section 38.4 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 Expansion Infrastructure; and
    - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 40, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Expansion Infrastructure; and
  - (iii) as soon as practicable vacate the Lands and shall leave the Lands and the Expansion Infrastructure in a safe, clean and orderly condition.

**38.8 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 38, this Project Agreement shall terminate and, except as provided in Section 38.9, all rights and obligations of Contracting Authority and Project Co under this Project Agreement shall cease and be of no further force and effect.

**38.9 Survival**

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Project Agreement; and
  - (ii) Sections 1.2, 1.3, 4, 6, 7, 11.15, 11.16, 17.2, 18.1, 18.2, 18.3(d), 18.4(c), 18.5(c), 23.6, 24.14, 27, 35.3, 35.5, 36.3, 37.4, 38, 39, 40 (with the exception of 40.4(b)), 41, 42, 43.3, 44, 45, 46, 46.5, 49.3, 50.1, 53.4, 53.8, 53.9, 53.10, 53.11 and 53.12 of this Project Agreement, Schedule 14 – Outline Commissioning and Completion Requirements, Schedule 19 – Payment Procedures, Schedule 23 – Compensation on Termination, Schedule 24 – [REDACTED], Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution

Procedure and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 37.4. For clarity, any termination of this Project Agreement shall be without prejudice to, and shall not affect, the Performance Guarantee of Construction Guarantor, which shall survive the termination of this Project Agreement, including termination on the Expiry Date pursuant to Section 37.4, in respect of any and all of such surviving provisions of the Project Agreement.

### **39. COMPENSATION ON TERMINATION**

#### **39.1 Compensation on Termination**

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

#### **39.2 Full and Final Settlement**

- (a) Except as otherwise provided in Section 39.2(b), any compensation paid pursuant to this Section 39, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Contracting Authority shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 39.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 4.11 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 38.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date.

**40. INTELLECTUAL PROPERTY****40.1 Representation and Warranty**

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

**40.2 Delivery of Project Data and Intellectual Property Rights**

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, Contracting Authority free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to Contracting Authority on the aforesaid terms of this Section 40.2(a), for any and all of the Approved Purposes.

**40.3 Licence of Project Data and Intellectual Property Rights**

- (a) Project Co:
- (i) hereby grants to Contracting Authority an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
  - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor, obtain the grant of an equivalent licence to that referred to in Section 40.3(a)(i), provided that such licence may, in respect of the Construction Contractor's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the Design and Construction Contract; and
  - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor), obtain the grant

of an equivalent licence to that referred to in Section 40.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.

- (b) In this Section 40.3 and 40.5(a), “use” includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

#### 40.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and Contracting Authority pursuant to this Project Agreement or in relation to the Expansion Infrastructure, the Site, the Lands or Works (the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that Contracting Authority shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of Contracting Authority, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) 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 Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to Contracting Authority.

#### 40.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 40 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 (as such term is defined in Section 40.3(b), subject to the payment by Contracting Authority of any relevant fee) such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 40.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 40 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 40.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

#### **40.6 Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against Contracting Authority or any Province Person which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by Contracting Authority or any Province Person or because 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 then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by Contracting Authority or any Province Person otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless Contracting Authority and such Province Person from and against all such demands, claims, actions and proceedings and Section 45.3 shall apply.

#### **40.7 Contracting Authority Trade-Marks**

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

#### **40.8 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 40 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.

#### **40.9 Government Use of Documents**

- (a) Project Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with Contracting Authority's ability to use this Project Agreement in any manner desired by Contracting Authority.

- (b) Project Co hereby consents to the use by Contracting Authority of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by Contracting Authority (in consultation with Project Co) of any information supplied in confidence to Contracting Authority by Project Co in circumstances where disclosure may be refused under section 17(1) of FIPPA.

#### **40.10 Restrictions**

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

### **41. CONFIDENTIALITY**

#### **41.1 Disclosure**

- (a) Subject to Sections 41.1(b), 41.1(c) and 41.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, Contracting Authority has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as Contracting Authority, in its sole discretion, may consider appropriate. In exercising its discretion, Contracting Authority will be guided by the principles set out in Sections 41.1(b) and 41.1(c).
- (b) Contracting Authority will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with



- this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 41.1(b), but subject to Section 41.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), Contracting Authority may disclose such information.
- (d) Notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that this Project Agreement and any or all terms thereof are subject to the Digital and Data Directive and that the Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Digital and Data Directive.

#### **41.2 Redaction**

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), Contracting Authority shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 41.1(b). The Parties acknowledge and agree that the Guaranteed Price, but not any breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 41.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and Contracting Authority shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

#### **41.3 Disclosure to Government**

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

information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by Contracting Authority.

#### **41.4 Freedom of Information**

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

#### **41.5 Use and Disclosure of Confidential Information**

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 41 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
  - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee or agent of the Lenders and the Lenders' Agent, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Works or which Project Co is obliged to supply by the terms of the Lending Agreements; and
  - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that Contracting Authority may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of Contracting Authority's alternate procurement and financing policies and framework. Contracting Authority will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.

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- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.
- (f) Without limiting the generality of this Section 41.5, Project Co shall comply with the document control and security protocol submitted by Project Co in accordance with Schedule 10 – Review Procedure. Such protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by Contracting Authority (the “**Document Control and Security Protocol**”). The Document Control and Security Protocol shall be the first document submitted by Project Co pursuant to Schedule 10 – Review Procedure and, in any event, shall be submitted within 5 Business Days following Financial Close.

#### 41.6 Exceptions

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

- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to Contracting Authority upon a termination of this Project Agreement, pursuant to Section 37 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Works, including the design or construction of the Expansion Infrastructure, or any other operations or services the same as, or similar to, the Works; or
- (ix) the information would not be exempt from disclosure under FIPPA.

#### 41.7 Survival of Confidentiality

- (a) The obligations in Section 41.1 to Section 41.6 will cease on the date that is three years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

### 42. PERSONAL INFORMATION

#### 42.1 General

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of Contracting Authority and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by Contracting Authority.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act (Canada)* and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Works.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 42.
- (e) Project Co shall allow Contracting Authority on reasonable Notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 42

including the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Contracting Authority with respect to Project Co or each Project Co Party's handling of Personal Information.

- (f) Project Co shall not subcontract or delegate to any third party any of the Works that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of Contracting Authority and without obtaining written contractual commitments of such third party substantially the same as those of this Section 42.

#### **42.2 Protection of Personal Information**

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees that require access to such Personal Information to fulfil their job requirements in connection with the Works and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 42.
- (c) Upon termination of this Project Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Works involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to (c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform 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 42.
- (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

of such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to keep Personal Information confidential.

### **42.3 Survival**

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 42 and any other provision of this Project Agreement, this Section 42 shall prevail.
- (c) The obligations in this Section 42 shall survive the termination of this Project Agreement.

## **43. INSURANCE AND PERFORMANCE SECURITY**

### **43.1 General Requirements**

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

### **43.2 No Relief from Liabilities and Obligations**

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

### **43.3 Performance Guarantee of Construction Guarantor**

- (a) At all times during the Project Term and, in respect of the provisions described in Section 38.9, following the Project Term, Project Co shall ensure that a valid and binding Performance Guarantee of the Construction Guarantor in favour of Contracting Authority from the Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by Contracting Authority acting in its sole discretion) and in the form of guarantee attached as Schedule 29 – Performance Guarantee of Construction Guarantor, is in place and enforceable by Contracting Authority.

## **44. KING'S HIGHWAY/TITLE**

### **44.1 King's Highway/Title**

- (a) Project Co acknowledges that the Expansion Infrastructure will be a King's Highway under all interpretations and for all purposes of Applicable Law with ownership vested

- in Contracting Authority. For greater certainty, no provision of this Project Agreement shall confer upon Project Co any statutory or common law rights or privileges of Contracting Authority with respect to a King's Highway (or of a municipality or other relevant authority with respect to a municipal road) other than the licence rights and other rights specifically set out in this Project Agreement.
- (b) Title to each item and part of the Expansion 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 Site or 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 Expansion Infrastructure or are to be affixed or attached to the Expansion Infrastructure prior to Substantial Completion shall pass to Contracting Authority (or as Contracting Authority may direct) at the time that such items are included in the Expansion Infrastructure or affixed or attached to the Expansion Infrastructure.

## 45. INDEMNITIES

### 45.1 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) failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
  - (ii) any physical loss of or damage to all or any part of the Lands and the Expansion Infrastructure, or to any equipment, assets or other property related thereto;
  - (iii) the death or personal injury of any person;
  - (iv) any physical loss of or damage to property or assets of any third party; or
  - (v) any other loss or damage of any third party,

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

- (vi) the breach of this Project Agreement by Contracting Authority; or

- (vii) in respect of Section 45.1(a)(i), any deliberate or negligent act or omission of Contracting Authority or any Province Person; or
  - (viii) in respect of Sections 45.1(a)(ii), 45.1(a)(iii), 45.1(a)(iv) or 45.1(a)(v), any act or omission of Contracting Authority or any Province Person.
- (b) Project Co shall indemnify and save harmless Contracting Authority and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless Contracting Authority 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, arising out of, or involving or relating to any one or more of the following:
  - (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement;
  - (ii) any Contamination on, in or under, or migrating to or from, the Lands, except for Contamination for which Contracting Authority is responsible pursuant to Section 18.2(a); 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 Project Agreement by Contracting Authority or by any act or omission of Contracting Authority or any Contracting Authority Party.
- (d) Without prejudice to Contracting Authority's rights under Section 35 and any other rights under this Project Agreement, if Contracting Authority exercises its step-in rights under the Construction Contractor's Direct Agreement, Project Co shall indemnify Contracting Authority for all obligations of Project Co assumed by Contracting Authority under the Design and Construction Contract, as the case may be, and for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights.
- (e) Project Co shall indemnify Contracting Authority for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to



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

#### 45.2 Contracting Authority Indemnities to Project Co

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

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

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

(b) 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 herein.

- (c) Contracting Authority shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by Contracting Authority pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Contracting Authority; or (iii) an amount determined as payable by Contracting Authority to Project Co under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by Contracting Authority to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

### 45.3 Conduct of Claims

- (a) This Section 45.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any Notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 45, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within ten Business Days of receipt of the same. Such Notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 45.3(d), 45.3(e) and 45.3(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.

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- (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 45.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 45.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the Notice from the Beneficiary under Section 45.3(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 45.3(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 45.3(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 45.3(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 45.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

#### 45.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 53.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

### 46. LIMITS ON LIABILITY

#### 46.1 Indirect Losses

- (a) Subject to Section 46.1(b) and without prejudice to the Parties’ rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;
  - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
  - (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

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

- (b) With respect to the indemnity in Section 45.1(a)(i) only, the exceptions in Sections 46.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, Contracting Authority’s loss of use of the Expansion Infrastructure or a portion thereof, which for the purposes of Section 45.1(a)(i), shall be Direct Losses.

#### **46.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein, Contracting Authority and the Province Persons shall not be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to Contracting Authority or any Province Person in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

#### **46.3 No Restriction on Remedies**

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

#### **46.4 Maximum Liability**

- (a) Subject to Section 46.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 45 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co’s maximum aggregate liability in respect of all claims under Sections 45.1(a)(i) and 46.5 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.

- (c) Nothing in this Section 46.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

#### 46.5 SC Liquidated Damages

- (a) In the event that a Substantial Completion Certificate has not been issued on or before the date which is 30 days following the Scheduled Substantial Completion Date (the “**SC LD Commencement Date**”) Project Co shall pay the SC Liquidated Damages from the SC LD Commencement Date until the earlier of (i) the Substantial Completion Date and (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms. Contracting Authority and Project Co agree that such SC Liquidated Damages are not a penalty but represent a genuine and reasonable pre-estimate of Administrative Costs which Contracting Authority will incur as a result of Project Co’s failure to achieve Substantial Completion by the Scheduled Substantial Completion Date. Subject and without prejudice to the other remedies of Contracting Authority herein (including remedies for termination for a Project Co Event of Default), such payment shall constitute full and final satisfaction of any and all Administrative Costs that may be claimed by Contracting Authority as a result of Project Co not achieving Substantial Completion by the Scheduled Substantial Completion Date. Project Co agrees with Contracting Authority that such SC Liquidated Damages shall be payable whether or not Contracting Authority incurs or mitigates such Administrative Costs, and that Contracting Authority shall have no obligation to mitigate any such Administrative Costs. Project Co agrees that it is, and shall be, estopped from alleging that such SC Liquidated Damages are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such Administrative Costs were not incurred.
- (b) Notwithstanding Section 46.5(a), Project Co’s obligation to indemnify Contracting Authority pursuant to Section 45.1(a)(i) shall remain unaffected by, and shall apply in addition to, any SC Liquidated Damages payable by Project Co pursuant to this Section 46.5 provided, however, that any amount for which Project Co is required to indemnify Contracting Authority pursuant to 45.1(a)(i) shall exclude administrative costs and expenses in respect of which SC Liquidated Damages have been paid or are payable.
- (c) Except as expressly provided herein, nothing in this Section 46.5 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of this Project Agreement.
- (d) Where SC Liquidated Damages are incurred, Project Co shall, without prejudice to Contracting Authority’s rights under Section 4.11(a)(i), pay such amounts to Contracting Authority on a quarterly basis, on the last Business Day of each calendar quarter, commencing the first calendar quarter following the SC LD Commencement Date.

**47. DISPUTE RESOLUTION PROCEDURE**

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

**48. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL****48.1 Project Co Assignment**

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of Contracting Authority, which consent may be withheld in the sole discretion of Contracting Authority, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities: (i) are inconsistent with Contracting Authority's role (in Contracting Authority's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of Contracting Authority and/or any Province Person; or (iii) are inconsistent with the nature of the Province of Ontario's highway system, so as to affect public perception of that system or undertaking.
- (b) Section 48.1(a) shall not apply to:
- (i) the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if Contracting Authority so requires; or
  - (ii) any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any sub-subcontractor in connection with the Project.

**48.2 Contracting Authority Assignment**

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

obligations hereunder and under the other Project Documents to which Contracting Authority is a party in respect of the period from and after the assignment; and

- (v) in circumstances other than those described in Sections 48.2(a)(i) to 48.2(a)(iv), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of Contracting Authority hereunder and under any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties in respect of the period from and after the assignment.
- (b) Contracting Authority shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 48.2.

### **48.3 Subcontracting**

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities: (i) are inconsistent with Contracting Authority's role (in Contracting Authority's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of Contracting Authority and/or any Province Person; or (iii) are inconsistent with the nature of the Province of Ontario's highway system, so as to affect public perception of that system or undertaking.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 8.2(a), 48.3(c) and 48.3(d) or received the prior written consent of Contracting Authority.
- (c) Subject to Section 48.3(d), if the Design and Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to Contracting Authority's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the Design and Construction Contract so replaced, including the provision of replacement Security and an agreement on the same or substantially similar terms as the Construction Contractor's Direct Agreement unless any material variations are approved by Contracting Authority, acting reasonably.



**48.4 Changes in Ownership and Control**

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of Project Co or of any Control Party shall be permitted:
- (i) where the person acquiring the ownership interest is a Restricted Person;
  - (ii) where the person acquiring the ownership interest is a person whose standing or activities: (A) are inconsistent with Contracting Authority's role (in Contracting Authority's reasonable opinion) in the Province of Ontario; (B) may compromise the reputation or integrity of Contracting Authority and/or any Government Entity; or (C) are inconsistent with the nature of the Province's highway system, so as to affect public perception of that system or undertaking; or
  - (iii) if such Change in Ownership would have a material adverse effect on the performance of the Works.
- (c) In the event that:
- (i) a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, or
  - (ii) A person who, directly or indirectly, has an Economic Interest in Project Co of the Project becomes a Restricted Person as set out in paragraph (a)(i) of the definition of Restricted Person,

Contracting Authority may:

- (iii) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control or Economic Interest, as applicable; or
  - (iv) in any other circumstance, require a Change in Ownership so that such 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 5 Business Days after such Change in Ownership, and such Notice shall include

- a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership.
- (e) Subject to Section 48.4(a), (b), (c) and (d), no Change in Control of Project Co, or of any Control Party shall be permitted without the prior written consent of Contracting Authority, not to be unreasonably withheld or delayed.
- (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.
  - (iii) Following the delivery to Contracting Authority of the Notice referred to in this Section 48.4(f), Project Co shall provide Contracting Authority with such other information pertaining to the proposed Change in Control as Contracting Authority may reasonably request.
- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities: (A) are inconsistent with Contracting Authority's role (in Contracting Authority's reasonable opinion) in the Province of Ontario; (B) may compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party; or (C) are inconsistent with the nature of the Province's highway system, so as to affect public perception of that system or undertaking.
- (h) This Section 48.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities, units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (i) Section 48.4(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the "**Relevant Entity**") owned by an employee of such Relevant Entity, unless such changes individually or in the aggregate determined since the date of this Project Agreement, would result in a Change of Control of Project Co, in which case Section 48.4(f) shall apply.

**48.5 Contracting Authority Due Diligence**

- (a) Project Co shall promptly reimburse Contracting Authority for Contracting Authority's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of Contracting Authority pursuant to, or Contracting Authority's determination of Project Co's compliance with Section 48.1, 48.3 or 48.4 whether or not such consent is granted.

**49. PROHIBITED ACTS****49.1 Definition**

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

provided that this Section 49.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Contracting Authority, provided that this Section 49.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Contracting Authority or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with

Contracting Authority or any public body in connection with the Project without contravening the intent of this Section 49;

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

## 49.2 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 35 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 35 shall apply, unless, within 30 days of receipt of such Notice, Project Co terminates the employee's employment and ensures that the relevant part of the Works shall be performed by another person;
  - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give written Notice to Project Co and Section 35 shall apply, unless, within 30 days of receipt of such Notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Works shall be performed by another person, where relevant, in accordance with Section 48.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give Notice to Project Co and Section 35 shall apply, unless, within 30 days of receipt of such Notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the 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 49.2(a)(i) to 49.2(a)(iv), then Contracting Authority may give Notice to Project Co and Section 35 shall apply, unless, within 30 days of receipt of such Notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if

necessary, ensures that the relevant part of the Works shall be performed by another person.

- (b) Any Notice of termination under this Section 49.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom Contracting Authority believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 49.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 49.

### **49.3 Permitted Payments**

- (a) Nothing contained in this Section 49 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.

### **49.4 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.

### **49.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 49, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

## **50. NOTICES**

### **50.1 Notices to Parties**

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

If to Project Co: GIP HWY 3 Inc.  
[REDACTED]  
Attn: [REDACTED]  
Email: [REDACTED]

If to Contracting Authority: Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 0B7

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation  
1 Dundas Street West, 20<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2C8

Attn.: [REDACTED]  
Email: [REDACTED]

## 50.2 Notices to Representatives

- (a) In addition to the Notice requirements set out in Section 50.1, where any Notice is to be provided or submitted to the Contracting Authority Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Project Co Representative: GIP HWY 3 Inc.  
[REDACTED]  
Attn: [REDACTED]  
Email: [REDACTED]

If to the Contracting Authority Representative: Ministry of Transportation  
659 Exeter road  
London, Ontario  
N6E 1L3

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation

1 Dundas Street West, 20<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2C8

Attn.: [REDACTED]  
Email: [REDACTED]

### 50.3 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 50.3.

### 50.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 50.1 or 50.2 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.

### 50.5 Deemed Receipt of Notices

- (a) Subject to Sections 50.5(b), 50.5(c) and 50.5(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 50.
- (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.

**50.6 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 50.

**51. EMERGENCY MATTERS****51.1 Emergency**

- (a) From Financial Close until completion of the Works, upon the occurrence of an Emergency, Project Co shall comply with the Contractor Site Specific Safety Manual.
- (b) **Intentionally Deleted.**
- (c) If, in respect of any Emergency, Contracting Authority notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by Contracting Authority or any other statutory body, then Project Co shall, subject to Schedule 22 – Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Section 51.1(a)).

**52. CONTRACTING AUTHORITY’S DESIGNATE****52.1 Right to Designate**

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



right of the Province to delegate administrative responsibilities hereunder as set forth in this Section 52.1.

### **53. GENERAL**

#### **53.1 Amendments**

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

#### **53.2 Waiver**

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy. No further waiver in writing is required in order to give effect to the waivers provided for in accordance with the terms of Sections 24.4(k) and 24.13(g).
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

#### **53.3 Relationship Between the Parties**

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between Contracting Authority and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between Contracting Authority and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
- (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent that it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;

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

**53.4 General Duty to Mitigate**

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

**53.5 Actual Knowledge**

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

**53.6 Entire Agreement**

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

**53.7 No Reliance**

- (a) Each of the Parties acknowledges that:
- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
  - (ii) this Section 53.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

**53.8 Severability**

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

**53.9 Enurement**

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

**53.10 Governing Law and Jurisdiction**

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 – Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

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

### **53.11 Cumulative Remedies**

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

### **53.12 Further Assurance**

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

### **53.13 Costs**

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

### **53.14 Language of Agreement**

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

### **53.15 Proof of Authority**

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

### **53.16 Counterparts**

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

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

### 53.17 Government Entities as Third Party Beneficiaries

- (a) The provisions of Sections 2.4, 5.1(b), 9.1(c), 11.11(a), 40.6, 40.7, 40.9, 41, 45.1 and 46.2 and each other provision of this Project Agreement which is expressed to be for the benefit of a Province Person or an 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 by contract or otherwise.
- (b) Contracting Authority shall hold the rights and benefits of Sections 2.4, 5.1(b), 9.1(c), 11.11(a), 40.6, 40.7, 40.9, 40.10, 45.1 and 46.2 and each other provision of this Project Agreement which is to the benefit of a Province Person or an 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.

### 53.18 Time is of the Essence

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

### 53.19 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

**HIS MAJESTY THE KING IN RIGHT  
OF ONTARIO** as represented by the  
Minister of Transportation

---

Name:

Title:

---

Name:

Title:

I/We have authority to bind the corporation.

**HIS MAJESTY THE KING IN RIGHT  
OF ONTARIO** as represented by the  
Minister of Transportation as represented  
by Ontario Infrastructure and Lands  
Corporation

---

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

**GIP HWY 3 INC.**

Per: \_\_\_\_\_

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.



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**SCHEDULE 1****DEFINITIONS AND INTERPRETATION**

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
  - 1.1 “**10-Day Notice**” has the meaning given in Section 24.4(a)(i) of the Project Agreement.
  - 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 Management Plan(s)**” has the meaning given in Schedule 17 – Environmental Obligations.
  - 1.4 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
  - 1.5 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works.
  - 1.6 “**Additional Lands**” has the meaning given in Section 16.8(c) of the Project Agreement.
  - 1.7 “**Additional Lands Effective Date**” has the meaning given in Section 16.8(c) of the Project Agreement.
  - 1.8 “**Additional Lands Request**” has the meaning given in Section 16.8(a) of the Project Agreement.
  - 1.9 “**Additional Works**” means those works in relation to the Expansion Infrastructure which are not Works and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion, but excluding the Utility Relocation Works.
  - 1.10 “**Adjudication**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
  - 1.11 “**Adjudicator**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
  - 1.12 “**Adjusted Finishing Holdback Amount**” has the meaning given in Schedule 19 – Payment Procedures of the Project Agreement.
  - 1.13 “**Adjusted Legislative Holdback Amount**” has the meaning given in Schedule 19 – Payment Procedures of the Project Agreement.
  - 1.14 “**Administrative Costs**” means, for the purposes of Section 46.5 of the Project Agreement, only those costs and expenses incurred by Contracting Authority in the ordinary course in

relation to staffing, the Design Compliance Consultant, the CDB and the Independent Certifier, in each case assuming normal utilization.

- 1.15 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of the unitholders, shareholders, partners or owners of Project Co, as applicable, and any person or entity controlling, controlled by or under common control with Project Co where “control” of any person or entity shall mean the ownership, directly or indirectly, of securities of such person or entity having the power to elect a majority of directors or similar authority or to otherwise control the decisions made on behalf of such person or entity.
- 1.16 “**Ancillary Documents**” means the Design and Construction Contract, and the Bonds.
- 1.17 “**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.
- 1.18 “**Anticipated COVID-19 Impact End Date**” means six (6) months from Financial Close.
- 1.19 “**Anticipated Final Completion Date**” has the meaning given in Section 24.12(a) of the Project Agreement.
- 1.20 “**Anticipated Milestone Payment Completion Date**” has the meaning given in Section 24.16A.1(a) of the Project Agreement.
- 1.21 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.22 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (b) any Authority Requirement; and
  - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Contracting Authority, any Contracting Authority Party or any Province Person).
- 1.23 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.

- 1.24 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.25 “**Approved Purposes**” means:
- (a) the performance of Contracting Authority Activities (and operations relating to such performance), the obligations of Contracting Authority under the Project Agreement and/or any other activities of Contracting Authority or a Governmental Authority in connection with the Expansion Infrastructure and the Lands;
  - (b) following termination of the Project Agreement, the design, construction and/or maintenance of the Expansion Infrastructure, and/or the performance of any other operations the same as, or similar to, the Works; and
  - (c) the development by Contracting Authority of transportation standards, policies and procedures.
- 1.26 “**Archaeological Report**” means the archaeological reports listed in Appendix B to this Schedule 1.
- 1.27 “**As-Built Drawings**” means drawings prepared by Project Co to reflect the installed, constructed or commissioned conditions of the Project, in a format and with content and details that Contracting Authority, acting reasonably, considers appropriate.
- 1.28 “**As-built Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.29 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.30 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports, the Environmental Assessments, the Utility Background Information and any other report given or otherwise referred to in the Output Specifications), studies, plans, data, documents, or other information, given or made available to Project Co or any Project Co Party by Contracting Authority or any Contracting Authority Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.31 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.32 “**Beneficiary**” has the meaning given in Section 45.3(a) of the Project Agreement.
- 1.33 “**Betterment**” means work performed for the benefit of a Utility Company in relation to the Utility Infrastructure, that is incremental to the scope of work reasonably necessary to permit Project Co to carry out the Works and, for clarity, excludes:

- (a) Utility Work performed to comply with current industry or Utility Company standards;
  - (b) Utility Work required to maintain the current capacity of such Utility Infrastructure; and
  - (c) any coordination and administrative activities performed with respect to such work, including the negotiation of and coordination and administrative activities in connection with the negotiation of a Utility Agreement or Utility (Province) Agreement with a Utility Company.
- 1.34 “**Bonds**” means any one or more of the Performance Bond and the Labour and Material Payment Bond described in Section 17 of Schedule 25 – Insurance and Performance Security Requirements, and, collectively, means all of them.
- 1.35 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario).
- 1.36 “**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.
- 1.37 “**CA Reinstatement Work**” has the meaning given in Section 11.9(b)(v) of the Project Agreement.
- 1.38 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.39 “**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.
- 1.40 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.41 “**CDB**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.42 “**CDB Chair**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.43 “**CDB Expiry Date**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.44 “**CDB Member Agreement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.

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- 1.45 “**CDB Member Statement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.46 “**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.
- 1.47 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.48 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.49 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 15.1(b) of the Project Agreement.
- 1.50 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
  - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person.
- 1.51 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.52 “**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.
- 1.53 “**Checking Team**” has the meaning given in Schedule 15-2 – Design and Construction.
- 1.54 “**Class EA**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.55 “**Commercial Close**” means the date of the Project Agreement.

- 1.56 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 - Outline Commissioning and Completion Requirements;
  - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
  - (c) recommended by the manufacturer of any part of the New Expansion Infrastructure; and
  - (d) required to be included in the Final Commissioning Program by the Independent Certifier, the Contracting Authority Commissioning Consultant or the Contracting Authority Representative during its development pursuant to Section 24.2 of the Project Agreement.
- 1.57 “**Communications Director**” has the meaning given in Schedule 18 – Communications.
- 1.58 “**Communications Plan**” has the meaning given in Schedule 18 – Communications.
- 1.59 “**Communications Working Group**” or “**CWG**” has the meaning given in Schedule 18 – Communications.
- 1.60 “**Communications Works Submittals**” has the meaning given in Schedule 18 – Communications.
- 1.61 “**Compensation Event**” has the meaning given in Section 32.1(a) of the Project Agreement.
- 1.62 “**Compensation Payment**” means the Contracting Authority Default Termination Sum, the Project Co Default Termination Sum or the Non-Default Termination Sum.
- 1.63 “**Completion Holdback**” has the meaning given in Section 24.9(b) of the Project Agreement.
- 1.64 “**Confidant**” has the meaning given in Section 41.6(a)(i) of the Project Agreement.
- 1.65 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.66 “**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 s. 87.3 of the *Construction Act*, as amended from time to time.
- 1.67 “**Construction Activities**” means construction, rehabilitation, Reinstatement Works, rectification work, warranty work, and any other aspect of the Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, inspection, calibration, testing or commissioning of any part of the Expansion Infrastructure;

- (b) comprises the assessment of any Expansion Infrastructure;
  - (c) may affect the structural integrity of the Expansion Infrastructure, and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, Variation, or Innovation Proposal accepted by Contracting Authority; or
  - (d) comprises Construction Clearing and Grubbing.
- 1.68 “**Construction Certificate**” means a certificate with contents described in Attachment 2 to Appendix A of Schedule 10 – Review Procedure.
- 1.69 “**Construction Clearing and Grubbing**” means the stage of the Works in which vegetation and debris is cleared from the Lands (clearing) and a root rake or similar device is employed to remove roots remaining in the soil (grubbing).
- 1.70 “**Construction Contractor**” means [REDACTED], engaged by Project Co to perform the Works and any substitute construction contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.71 “**Construction Contractor’s Direct Agreement**” means the agreement between Contracting Authority, Project Co and the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5 – Construction Contractor’s Direct Agreement.
- 1.72 “**Construction Contractor Support Agreement**” means the agreement entered into between Project Co and the Construction Contractor concerning, among other things, performance security the Construction Contractor is to provide and which is dated on or about the date of Financial Close.
- 1.73 “**Construction Defect**” has the meaning given to it in Section 11.14(a) of the Project Agreement.
- 1.74 “**Construction Document Submittals**” has the meaning given in Section 11.1(d)(ii) of the Project Agreement.
- 1.75 “**Construction Guarantor**” means [REDACTED].
- 1.76 “**Construction Latent Defect**” has the meaning given in Section 11.15(c).
- 1.77 “**Construction Period**” means the period of time commencing on Financial Close to and including the Final Completion.
- 1.78 “**Construction Period Deduction**” has the meaning given in Schedule 21 – Construction Period Failures.
- 1.79 “**Construction Period Quality Failure**” has the meaning given in Schedule 21 – Construction Period Failures.

- 1.80 “**Construction Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.81 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.82 “**Contracting Authority**” means His Majesty the King in right of Ontario as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation and His Majesty the King in right of Ontario, as represented by the Minister of Transportation.
- 1.83 “**Contracting Authority Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands and the Expansion Infrastructure by any Governmental Authority or Emergency Service Provider, and includes the MTO Activities.
- 1.84 “**Contracting Authority Archaeologist**” has the meaning given in Section 20.1(a)(ii) of the Project Agreement.
- 1.85 “**Contracting Authority Commissioning**” means the commissioning activities to be carried out by Contracting Authority in accordance with the Final Commissioning Program.
- 1.86 “**Contracting Authority Commissioning Consultant**” means the person appointed by Contracting Authority as its commissioning consultant.
- 1.87 “**Contracting Authority Commissioning Period**” means the period during which Contracting Authority is performing the Contracting Authority Commissioning.
- 1.88 “**Contracting Authority Commissioning Tests**” means all commissioning tests required to be performed by Contracting Authority pursuant to the Final Commissioning Program.
- 1.89 “**Contracting Authority Contamination**” has the meaning given in Section 18.2(b) of the Project Agreement.
- 1.90 “**Contracting Authority Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.91 “**Contracting Authority Design Team**” means any of Contracting Authority, its agents, contractors and subcontractors of any tier and its or their governors, directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Expansion Infrastructure on behalf of Contracting Authority, but excluding Project Co and any Project Co Party.



- 1.92 “**Contracting Authority Event of Default**” has the meaning given in Section 36.1(a) of the Project Agreement.
- 1.93 “**Contracting Authority Items of Interest or Value**” has the meaning given in Section 18.3(c) of the Project Agreement.
- 1.94 “**Contracting Authority Party**” means any of Contracting Authority and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the Contracting Authority Activities, but excluding Project Co and any Project Co Party, and the “**Contracting Authority Parties**” shall be construed accordingly.
- 1.95 “**Contracting Authority Permits, Licences, Approvals and Agreements**” means only those Contracting Authority permits, licences, approvals and agreements which are the responsibility of Contracting Authority to obtain as set out in Appendix A – Contracting Authority Permits, Licences, Approvals and Agreements to this Schedule 1, but for greater certainty shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in Appendix A to this Schedule 1 - Permits, Licences, Approvals and Agreements but required by the terms of any such item set out in such Appendix.
- 1.96 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on or prior to the date of Financial Close and any permitted replacement.
- 1.97 “**Contracting Authority Review Period**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.98 “**Contracting Authority Species-at-Risk**” has the meaning given in Section 18.5(b) of the Project Agreement.
- 1.99 “**Contracting Authority Taxes**” means taxes, or payments in lieu of taxes, imposed on Contracting Authority and HST and property taxes for which Contracting Authority is responsible pursuant to Section 4.14 of the Project Agreement.
- 1.100 “**Contracting Authority Third Party Beneficiaries**” has the meaning given in Section 53.17(a)(i) of the Project Agreement.
- 1.101 “**Contracting Authority Trade-Marks**” means any and all Trade-Marks used by Contracting Authority in any manner whatsoever.
- 1.102 “**Contracting Authority Utility Infrastructure**” has the meaning given in Section 18.4(b) of the Project Agreement.
- 1.103 “**Contractor Site Specific Safety Manual**” means the document describing the Construction Contractor’s health and safety management program for the Project and the Lands, all in accordance with the minimum requirements set out in Schedule 36 – Contractor Site Specific Safety Manual Requirements.

1.104 “**Control Party**” means:

- (a) any person with any form of direct ownership interest in Project Co;
- (b) [REDACTED];
- (c) [REDACTED] and
- (d) [REDACTED].

1.105 “**COR Certification**” means, in respect of a person, (a) receipt by such person of its Certificate of Recognition and Letter of Good Standing or (b) receipt by another person within a group of persons where such other person’s Certificate of Recognition and Letter of Good Standing extends and applies to such person.

1.106 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 11.24(a)(ii) of the Project Agreement.

1.107 “**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.

1.108 “**COR-Qualified Construction Project Co Party**” means one of the following:

- (a) where the Construction Contractor is a single legal entity, the Construction Contractor; or
- (b) where the Construction Contractor is a joint venture, each member of the joint venture; or
- (c) where the Construction Contractor is a partnership, each partner of the partnership, provided that each such person has current OHSAS 18001 Accreditation in good standing.

1.109 “**Corporations Act**” means the *Corporations Act*, R.S.O. 1990, c. C.38, as amended.

1.110 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 24 – [REDACTED].

1.111 “**Cost of the Works**” means the cost to Project Co of performing the Works as set out in Schedule 24 – [REDACTED] and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.

1.112 “**Countdown Notice**” has the meaning given in Section 24.8(a) of the Project Agreement.

- 1.113 “**COVID-19**” means the Coronavirus disease 2019 (COVID-19) global pandemic.
- 1.114 “**COVID-19 Change in Law Reference Date**” means [REDACTED].
- 1.115 “**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 metres.
- 1.116 “**CPI**” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.117 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.118 “**CPI<sub>n</sub>**” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.119 “**CPI<sub>o</sub>**” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.120 “**Crisis Communication Plan**” has the meaning given in Schedule 18 – Communications.
- 1.121 “**Critical Non-Conformance**” means any Non-Conformance, or combination of Major Non-Conformances, that:
- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
  - (b) is persistent, ongoing or 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 traffic flow, including availability of the Expansion Infrastructure to Expansion Infrastructure Users;
    - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Contracting Authority Activities;

- (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any Expansion Infrastructure User or Province Person;
- (iv) materially increase Contracting Authority’s risk or transfer risk to Contracting Authority or any Contracting Authority Party;
- (v) materially adversely affect the ability of any Contracting Authority Party or Other Contractor to perform their activities as permitted or contemplated by the Project Agreement;
- (vi) materially adversely affect or change the critical path of the Project as defined in the current Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving Substantial Completion; or
- (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the Province of Ontario’s highway system so as to negatively affect public perception of that system or undertaking.

1.122 “**Crown Agency Act (Ontario)**” means the Crown Agency Act, R.S.O. 1990, c. 48.

1.123 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.

1.124 “**Current Progress Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.

1.125 “**Delay Event**” has the meaning given in Section 31.1(a) of the Project Agreement.

1.126 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.

1.127 “**Demolition Default Event**” has the meaning given in Section 11.25(b)(ii) of the Project Agreement.

1.128 “**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.

1.129 “**Demolition Plan**” means a plan or other document prepared by a Professional Engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the demolition of a building or structure, and includes any changes to the plan or other document that are made by a Professional Engineer, limited licence holder or provisional licence holder.

- 1.130 “**Demolition Requirements**” has the meaning given in Section 11.25(a) of the Project Agreement.
- 1.131 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 11.25(a)(iv)(A) of the Project Agreement.
- 1.132 “**Demolition Supervisor**” has the meaning given in Section 11.25(a)(ii) of the Project Agreement.
- 1.133 “**Design and Construction Contract**” means, collectively (i) the design and construction contract between Project Co and the Construction Contractor, and (ii) the Construction Contractor Support Agreement between Project Co and the Construction Contractor, both dated on or about the date of Financial Close.
- 1.134 “**Design Certificate**” means a certificate with contents described in Attachment 1 to Schedule 10 – Review Procedure.
- 1.135 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared by Project Co relating to the design, construction or testing of the Expansion Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.136 “**Design Development Submittals**” has the meaning given in Section 11.1(d)(i) of the Project Agreement.
- 1.137 “**Design Management Plan**” means the plan submitted in accordance with Section 1.1 of Appendix A of Schedule 10 – Review Procedure.
- 1.138 “**Design Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.139 “**Design Review Meetings**” has the meaning given in Section 11.3(a) of the Project Agreement.
- 1.140 “**Design Team**” means [REDACTED], engaged by Project Co to design the Expansion Infrastructure and any substitute design team engaged by Project Co or a Project Co Party as may be permitted by the Project Agreement.
- 1.141 “**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 Expansion Infrastructure.
- 1.142 “**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.
- 1.143 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.

- 1.144 “**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.
- 1.145 “**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] ([REDACTED]%) percent of any of the shares, units or equity interests of a person;
  - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds [REDACTED] ([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.
- 1.146 “**Discriminatory Change in Law**” means any Change in Law which applies expressly to:
- (a) roads or highways whose design, construction and financing are procured by a contract similar to the Project Agreement in relation to other similar roads or highways;
  - (b) the Expansion Infrastructure and not to other roads or highways;
  - (c) Project Co and not to other persons; or
  - (d) persons undertaking projects for design, construction and financing that are procured by a contract similar to the Project Agreement and not to other persons undertaking similar projects procured on a different basis,
- except that such Change in Law shall not be a Discriminatory Change in Law:
- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
  - (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or

- (g) where such Change in Law affects companies generally.
- 1.147 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.148 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.149 “**Document Control and Security Protocol**” has the meaning given in Section 41.5(f) of the Project Agreement.
- 1.150 “**Draft Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.151 “**Drainage Infrastructure**” means privately, publicly or cooperatively owned lines, facilities or systems for distributing and draining of stormwater including, but not limited to, bridges deck drains, catch basins, subdrains, channels, conduits, creeks, culverts, detention ponds, retention ponds, ditches, drainage tiles, tile drains, draws, flumes, pipes, pumps, sloughs, treatment works, and associated appurtenances, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.
- 1.152 “**Early Works**” means the Works completed pursuant to the Early Works Agreement.
- 1.153 “**Early Works Agreement**” means the agreement dated March 31, 2023 between [REDACTED] and Contracting Authority pursuant to which Contracting Authority initiated performance of certain of the Works prior to Commercial Close.
- 1.154 “**Early Works Contractor**” has the meaning given in Section 5.2(a) of the Project Agreement.
- 1.155 “**Early Works Event**” has the meaning given in Section 5.2(c) of the Project Agreement.
- 1.156 “**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.
- 1.157 “**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 Expansion Infrastructure Users and Province Persons) or any part of or the whole of the Expansion 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 Expansion Infrastructure, any part of the Lands, the conduct of the Works and/or the conduct of Contracting Authority 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.

1.158 “**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 Expansion Infrastructure from time to time.

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

1.160 “**Endangered Species Act**” or “**ESA**” means the *Endangered Species Act, 2007*, S.O. 2007 c. 6 (Ontario).

1.161 “**Environmental Approvals**” means:

- (a) environmental approval in accordance with the *Environmental Assessment Act*;
- (b) environmental approval in accordance with the *ESA*;
- (c) environmental approval in accordance with the *SARA*;
- (d) environmental approval in accordance with the *Fisheries Act (Canada)*; and
- (e) any other Permits, Licences, Approvals and Agreements relating to environmental matters.



- 1.162 “**Environmental Assessment Act**” means the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18.
- 1.163 “**Environmental Assessments**” means the following Class EA documents:
- (a) Highway 3 Class Environmental Assessment (Group ‘B’) Planning and Preliminary Design Study, From Outer Drive Easterly 33.5 km to East Junction of Essex County Road 34 (Leamington By-Pass) Transportation Environmental Study Report and Preliminary Design Report (2006); and
  - (b) Transportation Environmental Study Report Addendum, Highway 3 Widening and Safety Enhancements Study - 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, July 26, 2021. Prepared by GHD.
- 1.164 “**Environmental Compliance Officer**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.165 “**Environmental Director**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.166 “**Environmental Frameworks**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.167 “**Environmental Laws**” means all Applicable Laws relating to public health or the protection of the environment or Species-at-Risk.
- 1.168 “**Environmental Management System**” has the meaning given to it in Section 3.6 of Schedule 17 - Environmental Obligations.
- 1.169 “**Environmental Manager**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.170 “**Environmental Quality Management Plan**” has the meaning given in Schedule 11 - Quality Management.
- 1.171 “**Environmental Reference Document**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.172 “**Environmental Reports**” means, collectively, the environmental reports listed in Appendix B to this Schedule 1.
- 1.173 “**ESA Permits**” means any permit required under the *Endangered Species Act, 2007*, S.O. 2007, c. 6.
- 1.174 “**Estimate**” has the meaning given in Schedule 22 - Variation Procedure.

- 1.175 “**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.
- 1.176 “**Existing Expansion Infrastructure**” means Infrastructure situated in, on, over or under any part of the Lands at Commercial Close that in accordance with the Output Specifications is to form part of the completed Expansion Infrastructure, but excluding property of Utility Companies.
- 1.177 “**Expansion Infrastructure**” means the New Expansion Infrastructure, and the Existing Expansion Infrastructure, being:
- (a) all Existing Expansion Infrastructure;
  - (b) all New Expansion Infrastructure
  - (c) the Infrastructure;
  - (d) all site services, utilities, roadways and parking areas required to support such Infrastructure;
  - (e) all supporting systems and improvements; and
  - (f) all other works, improvements, and Demolitions to occur on the Lands or the Site,
- in each case, required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.
- 1.178 “**Expansion Infrastructure User**” means any member of the public, any Province Person and any other person that is on or about the Expansion Infrastructure or is otherwise making use of the Expansion Infrastructure for any purpose.
- 1.179 “**Expiry Date**” means the first anniversary of the Final Completion Date.
- 1.180 “**Explicit Safety Analysis**” has the meaning given in Schedule 15-1 – Definitions and Reference Documents.
- 1.181 “**Final Commissioning Program**” means the program to be jointly developed and agreed by Contracting Authority and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.182 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies and Seasonal Works.
- 1.183 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.13 of the Project Agreement.

- 1.184 “**Final Completion Countdown Notice**” has the meaning given in Section 24.12(a) of the Project Agreement.
- 1.185 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.186 “**Final Completion Notice**” has the meaning given in Section 24.13(b) of the Project Agreement.
- 1.187 “**Final Design Development Submittals**” has the meaning given in Section 11.1(d)(i)(B) of the Project Agreement.
- 1.188 “**Financial Administration Act (Ontario)**” means the Financial Administration Act, R.S.O. 1990, c. F.12.
- 1.189 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.190 “**Financial Close Target Date**” means May 18, 2023 as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.191 “**Financial Model**” means, at any time, the computer spreadsheet model included in Schedule 24 – [REDACTED] for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as at Financial Close as attached to the Project Agreement as Schedule 24 – [REDACTED] as amended to such time with approval of Contracting Authority in accordance with Section 2.4 of Schedule 28 – Refinancing with respect to any Refinancing. If “**Financial Model**” is used without any reference to a particular time, it means the Financial Model at or as at the time the applicable calculation is being made.
- 1.192 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.193 “**Financial Submission Deadline**” means [REDACTED].
- 1.194 “**Financing**” means the financing with the Lenders that is consistent in all material respects with Schedule 24 - [REDACTED] and the Project Agreement, to finance the Project.
- 1.195 “**Finishing Holdback**” means the finishing construction lien holdback to be retained pursuant to Section 22(2) of the Construction Act.
- 1.196 “**Finishing Holdback Payment Certificate**” has the meaning given in Schedule 19 – Payment Procedures of the Project Agreement.

- 1.197 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (Ontario).
- 1.198 “**First Milestone Payment**” means \$[REDACTED].
- 1.199 “**First Milestone Payment Completion Date**” has the meaning given in Section 24.16A.2(e)(i) of the Project Agreement.
- 1.200 “**Fisheries Act (Canada)**” means the Fisheries Act (Canada) (R.S.C., 1985, c. F-14;
- 1.201 “**Fisheries Act Authorizations**” means the authorizations issued by Fisheries and Oceans Canada in accordance with the *Fisheries Act* and in connection with the Project;
- 1.202 “**Force Majeure**” has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.203 “**Funded Capital Costs**” is equal to the sum of the Cost of the Works and the Cost of the Financing, less the Legislative Holdback amount.
- 1.204 “**Geotechnical Reports**” means, collectively, the geotechnical reports listed in Appendix D to this Schedule 1.
- 1.205 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances, including professionals, manufacturers, contractors and trades who are experienced in work on infrastructure that is comparable to the Expansion Infrastructure.
- 1.206 “**Government Entity**” means any one or more of the Province and MOI.
- 1.207 “**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.
- 1.208 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Contracting Authority (including the Management Board of Cabinet), any aspect of the performance of the Project Agreement or the operation of the Expansion Infrastructure, or the Contracting Authority Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

- 1.209 “**Governmental Authority Communications Meetings**” has the meaning given in Schedule 18 – Communications.
- 1.210 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.211 “**H&S Certification Default Event**” has the meaning given in Section 11.24(b) of the Project Agreement.
- 1.212 “**H&S Certification Maintenance Plan**” has the meaning given in Section 11.24(b)(vii)(B) of the Project Agreement.
- 1.213 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 11.24(b)(vi)(B) of the Project Agreement.
- 1.214 “**H&S Construction Inspection**” has the meaning given in Section 15.1(b) of the Project Agreement.
- 1.215 “**H&S Construction Inspection Report**” has the meaning given in Section 15.1(d) of the Project Agreement.
- 1.216 “**H&S Construction Re-Inspection**” has the meaning given in Section 15.1I(ii) of the Project Agreement.
- 1.217 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 15.1(e)(iii) of the Project Agreement.
- 1.218 “**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.
- 1.219 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.220 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.221 “**Highway Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design and construction, of roads and highways.
- 1.222 “**Highway Traffic Act (Ontario)**” means the Highway Traffic Act, R.S.O. 1990, c. H.8.
- 1.223 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.224 “**IC Substantial Completion Deliverables Confirmation**” has the meaning given in Section 24.4(c)(i) of the Project Agreement.

- 1.225 “**IC Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 24.4(c)(ii) of the Project Agreement.
- 1.226 “**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.
- 1.227 “**Impacted Indigenous Nations and Indigenous Entities**” means those Indigenous Nations and Indigenous Entities whose interests may be affected by the Project.
- 1.228 “**Indemnifiable Taxes**” has the meaning given in Section 4.20(b) of the Project Agreement.
- 1.229 “**Indemnifier**” has the meaning given in Section 45.3(a) of the Project Agreement.
- 1.230 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.231 “**Independent Certifier Agreement**” means the contract entered into between Project Co, Contracting Authority and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.232 “**Independent Checking Team**” has the meaning given in Schedule 15-1 – Definitions and Reference Documents.
- 1.233 “**Independent Quality Assurance Firm**” or “**IQAF**” has the meaning given in Schedule 11 – Quality Management.
- 1.234 “**Indigenous Consultation and Engagement Plan**” has the meaning given in Section 11.31(b) of the Project Agreement.
- 1.235 “**Indigenous Entities**” means Indigenous-run organizations and businesses.
- 1.236 “**Indigenous Nations**” means, collectively, the original peoples of North America, including First Nations (Indians), Métis and Inuit.
- 1.237 “**Indirect Losses**” has the meaning given in Section 46.1 of the Project Agreement.
- 1.238 “**Infrastructure**” means all road, highway and landscape infrastructure including roadways, hard shoulders, slip roads, side roads, access roads, cul-de-sacs, pavement, bridges, water crossing structures, tunnels, sign structures, and other highway structures whether over or under the travelled surface, together with all related equipment, electrical infrastructure, mechanical infrastructure, supporting infrastructure, buildings, improvements and amenities, including all intelligent traffic systems and equipment,

- tolling systems and equipment, fences and barriers, curbs, culverts, Drainage Infrastructure, drainage systems including outfalls and stormwater management ponds, grassed areas, sidewalks, cycling lanes, hedges and trees, planted areas, footways, recreational equipment and facilities, road markings, road traffic signs, road traffic signals, road lighting, communications installations, embankments, retaining walls, paved surfaces, parking lot and parking lot amenities, truck lay-bys, maintenance yards, and signage, sculpture or decorative objects.
- 1.239 “**Innovation Proposal**” has the meaning given in Section 30.2(b) of the Project Agreement.
- 1.240 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.241 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.242 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between Contracting Authority, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.243 “**Intellectual Property**” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.244 “**Intellectual Property Rights**” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Expansion Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction); or
  - (b) the Project Agreement.
- 1.245 “**Interest Reference Rate**” means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.

- 1.246 “**Interim Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.247 “**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.
- 1.248 “**IO**” or “**Infrastructure Ontario**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto.
- 1.249 “**IPFP Framework**” has the meaning given in the recitals to the Project Agreement.
- 1.250 “**Irrecoverable Tax**” has the meaning given in Section 4.16(b) of the Project Agreement.
- 1.251 “**Issued For Construction**” or “**IFC**” has the meaning given in Section 3.5 of Appendix A of Schedule 10 – Review Procedure.
- 1.252 “**Items of Interest or Value**” has the meaning given in Section 18.3(a) of the Project Agreement.
- 1.253 “**Jointly Developed Materials**” has the meaning given in Section 40.4(a) of the Project Agreement.
- 1.254 “**Junior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time, all to the extent set out in the Financial Model at such time, and to the extent applied for the purposes of the Project and excluding the Junior Debt Makewhole, which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and a right to a makewhole amount equal to or less than a market makewhole amount. For clarity, amounts that do not meet such criteria will not be included in Junior Debt Amount.
- 1.255 “**Junior Debt Makewhole**” means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “makewhole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- 1.256 “**Junior Lenders**” means [Not Used]. (See Section 2.34 of this Schedule 1 – Definitions and Interpretation.)
- 1.257 “**Junior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.258 “**Key Individuals**” means those Project Co Parties listed in Schedule 9 - Key Individuals.



- 1.259 “**Knowledge of the Project Manager**” means knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in response to the Request for Proposals, but does not include any knowledge obtained as a result of the review of Background Information pursuant to Section 7.1 of the Project Agreement.
- 1.260 “**Labour and Material Payment Bond**” means, collectively, the Labour and Material Payment Bond and riders thereto in the form attached as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- 1.261 “**Lands**” means at any time and from time to time, those lands described in Schedule 20 – Lands.
- 1.262 “**Legislative Holdback**” means the basic holdback retained pursuant to Section 22(1) of the Construction Act. For greater certainty, the amount of the holdback required by Part IV of the Construction Act may be reduced by the amount of the holdback which has been paid by Project Co or the Construction Contractor in respect of Subcontracts certified complete under Section 33 of the Construction Act in accordance with Section 25 of the Construction Act.
- 1.263 “**Legislative Holdback Payment Certificate**” has the meaning given in Schedule 19 – Payment Procedures of the Project Agreement.
- 1.264 “**Lenders**” means any or all of the persons acting arm’s length to Project Co and each Project Co Party who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of Project Co or a Project Co Party.
- 1.265 “**Lenders’ Agent**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.266 “**Lenders’ Consultant**” means any consultant appointed from time to time by the Lenders (including the Lenders’ technical advisor). Nothing contained in the Project Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Project Documents shall constitute direction and/or control by Contracting Authority, Project Co or the Lenders.
- 1.267 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between Contracting Authority, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.268 “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates with Senior Lenders or Junior Lenders relating to the Financing, including, for greater certainty, the Security Documents and the Hedging Agreements. Without limitation, Lending Agreements includes any agreements or instruments described above with any of the Lenders and includes those related to any Refinancing.
- 1.269 “**Letter of Credit Provider**” has the meaning given in the Request for Proposals.

- 1.270 “**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.
- 1.271 “**Longstop Date**” has the meaning given in Section 35.1(a)(ii) of the Project Agreement.
- 1.272 “**Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.273 “**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 Project Agreement; or
  - (b) the continued existence of which is reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion.
- 1.274 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and replacing or performing filling operation on: (a) the Works as required under the Project Agreement; or (b) any existing components disturbed 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.
- 1.275 “**Material**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.276 “**MECP**” means His Majesty the King in right of Ontario as represented by the Minister of the Environment, Conservation and Parks, and includes any successors thereto or persons exercising delegated power under the Minister of the Environment, Conservation and Parks authority.
- 1.277 “**Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.278 “**Milestone Payment**” means the First Milestone Payment or the Second Milestone Payment, as applicable, and “**Milestone Payments**” means the First Milestone Payment, and the Second Milestone Payment.
- 1.279 “**Milestone Payment Completion**” means,
- (a) for the First Milestone Payment,
    - (i) Project Co incurring no less than [REDACTED]% of the Funded Capital Costs; and

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- (b) for the Second Milestone Payment,
- (i) Project Co incurring no less than [REDACTED]% of the Funded Capital Costs.
- 1.280 “**Milestone Payment Completion Countdown Notice**” has the meaning given in Section 24.16A.1(a) of the Project Agreement.
- 1.281 “**Milestone Payment Completion Date**” means either the First Milestone Payment Completion Date or the Second Milestone Payment Completion Date, as applicable, and the term “**Milestone Payment Completion Dates**” means the First Milestone Payment Completion Date and the Second Milestone Payment Completion Date.
- 1.282 “**Milestone Payment Completion Notice**” has the meaning given in Section 24.16A.2(b) of the Project Agreement.
- 1.283 “**Milestone Payment Date**” means the date that is two Business Days after the applicable Milestone Payment Completion Date.
- 1.284 “**Minister**” means the Minister of Transportation (Ontario) or any appointee succeeding to all or substantially all of the duties of the Minister of Transportation (Ontario).
- 1.285 “**Minor Deficiencies**” means any defects and deficiencies:
- (a) arising from or related to the Works required to achieve Substantial Completion under the Project Agreement; and
- (b) that, neither individually nor collectively, would:
- (i) materially impair (A) the public’s or Contracting Authority’s use and enjoyment of the Expansion Infrastructure (including the Contracting Authority Commissioning), or (B) the performance of the Contracting Authority Activities, or (C) traffic flow on the Expansion Infrastructure; or
- (ii) impair the health, safety or security of any person on the Expansion Infrastructure.
- 1.286 “**Minor Deficiencies Certification Date**” has the meaning given in Section 24.11(d) of the Project Agreement.
- 1.287 “**Minor Deficiency Completion Period**” means the period of time described in Section 24.10(a)(i) of the Project Agreement within which Project Co is required to complete and rectify a Minor Deficiency.
- 1.288 “**Minor Deficiencies List**” has the meaning given in Section 24.9(a) of the Project Agreement.
- 1.289 “**Minor Non-Conformance**” means any Non-Conformance that:

- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found; or
- (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.
- 1.290 **“Mislocated Utility Infrastructure”** means Utility Infrastructure that is discovered more than 3 metres horizontally from the location identified for such Utility Infrastructure in the Background Information, measured between the centre lines of such identified location.
- An exception applies to the Utility Infrastructure identified in the Utility relocation matrix (included in the Background Information) for which such tolerance shall be 1.5 metres horizontally and 1.5 metres vertically, from the location represented in as-built drawings available in the Background Information, measured between the centre lines of such identified location.
- The following shall be excluded from the definition of “Mislocated Utility Infrastructure”:
- (a) any Utility Infrastructure that is a service connection; and
- (b) any Utility Infrastructure that is above-ground, aerial, or at-grade.
- 1.291 **“Mitigation Plan”** means a mitigation plan pursuant to O. Reg. 242/08 under the ESA.
- 1.292 **“MNDMNR”** means His Majesty the King in right of Ontario as represented by the Minister of Northern Development, Mines, Natural Resources and Forestry, and includes any successors thereto or persons exercising delegated power under the Minister of Northern Development, Mines, Natural Resources and Forestry’s authority.
- 1.293 **“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.
- 1.294 **“MOLTSD”** means His Majesty the King in right of Ontario as represented by the Ministry of Labour, Training and Skills Development, and includes any successors thereto or persons exercising delegated power under such Minister’s authority.
- 1.295 **“MTO”** or **“Minister of Transportation”** means His Majesty the King in right of Ontario, as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegated power under such Minister’s authority.
- 1.296 **“MTO Activities”** includes the provision of all governmental services and the conduct of all activities performed in or associated with Ontario roads and other services of a similar nature.
- 1.297 **“MTO West Region Emergency Plan”** means MTO’s emergency management plan that describes actions to be taken in the event of an emergency on or about roads in the Province

- of Ontario as required by the Emergency Management and Civil Protection Act (Ontario), or such similar plan as may replace the MTO West Region Emergency Plan from time to time.
- 1.298 “**Municipality**” means the Town of Kingsville, Municipality of Leamington, Town of Essex and Essex County as applicable.
- 1.299 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add Contracting Authority and Lenders’ Agent as additional named Obligees, in the form attached as Rider No. 2 to Appendix C of Schedule 25 – Insurance and Performance Security Requirements.
- 1.300 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add Contracting Authority and Lenders’ Agent as additional named Obligees, in the form attached as Rider No. 2 to Appendix B of Schedule 25 – Insurance and Performance Security Requirements.
- 1.301 “**New Expansion Infrastructure**” at any time means Infrastructure constructed in, on, over or under any part of the Lands as part of the Works (including any Existing Expansion Infrastructure that has been altered, upgraded or augmented at that time by the carrying out of the Works), but excluding property of Utility Companies.
- 1.302 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day quoted by National Bank of Canada 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.
- 1.303 “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under the Project Agreement in respect of any aspect of the Works and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in this Project Agreement.
- 1.304 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.305 “**Non-Owned Lands**” means the lands described in Part 2 of Schedule 20 – Lands.
- 1.306 “**Non-participating Utility**” has the meaning given in Section 11.8(e) of the Project Agreement.
- 1.307 “**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).
- 1.308 “**Notice**” has the meaning given in Section 50.1(a) of the Project Agreement.

- 1.309 “**Notice of Non-Payment of Finishing Holdback**” has the meaning given in Schedule 19 – Payment Procedures of the Project Agreement.
- 1.310 “**Notice of Non-Payment of Legislative Holdback**” has the meaning given in Schedule 19 – Payment Procedures of the Project Agreement.
- 1.311 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).
- 1.312 “**OCPM**” has the meaning given in Section 13.5(b) of the Project Agreement.
- 1.313 “**OHSAS 18001**” means the international standard for occupational health and safety management systems developed by the Occupational Health and Safety Advisory Services Project Group, a British body formed to develop the standard.
- 1.314 “**OHSAS 18001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of OHSAS 18001.
- 1.315 “**OPSS**” has the meaning given in Schedule 15-1- Definitions and Reference Documents.
- 1.316 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.317 “**Other Contractor**” means an Additional Contractor, a Utility Company or a Utility Relocation Contractor.
- 1.318 “**Other Works**” means the Additional Works.
- 1.319 “**Outline Commissioning Program**” means all activities and requirements relating to commissioning, including the associated commissioning standards, specifications, procedures, submittals and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 - Outline Commissioning and Completion Requirements, without limitation those referenced in Section 1 of Schedule 14 – Outline Commissioning and Completion Requirements and as set out elsewhere in the Project Agreement.
- 1.320 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.321 “**Owned Lands Phase I**” means those lands described as such in Part 1 of Schedule 20 – Lands.
- 1.322 “**Owned Lands Phase II**” means those lands described as such in Part 1 of Schedule 20 – Lands.
- 1.323 “**Pandemic and Epidemic Change in Law**” means any Change in Law that:

- (a) came into effect after the COVID-19 Change in Law Reference Date, including any changes to the COVID-19 Emergency Public Health Physical Distancing Requirements;
- (b) is directly the result of and is directly related to the occurrence, increase or decrease in severity, or ending of a pandemic (including COVID-19) or epidemic;
- (c) directly affects (i) the performance of the Works, or (ii) the cost to Project Co of performing the Works; and
- (d) is not a Works Change in Law or a Relevant Change in Law.

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

(A) include:

- (1) any new, amendment or other modification to or repeal or replacement of any Applicable Law that satisfies the foregoing requirements of Sections (a) to (d) (inclusive); and
- (2) any Existing COVID-19 Laws Extension from and after the Anticipated COVID-19 Impact End Date;

(B) apply only to a Change in Law in respect of the Applicable Laws in the Province of Ontario and the laws of Canada applicable therein that satisfies such requirements.

1.324 **“Pandemic and Epidemic Change in Law Compensation”** has the meaning given in Section 29.4(a) of the Project Agreement.

1.325 **“Pandemic and Epidemic Response and Mitigation Plan”** means the pandemic and epidemic response and mitigation plan included in the Project Co Proposal Extracts.

1.326 **“Pandemic and Epidemic Supply Chain Delay”** means a delay in the performance of the Works directly arising from a delay in the delivery of material or supplies in support of the Construction Activities, to the extent such delay in delivery:

- (a) directly results from the occurrence of:
  - (i) a pandemic or epidemic other than the COVID-19 pandemic; or
  - (ii) a material increase in the spread of COVID-19 after the COVID-19 Change in Law Reference Date,

which directly and adversely affects the delivery of such materials or supplies by a Supplier or Subcontractor; and

- (b) prevents, delays or otherwise interferes with the performance of the Construction Activities.

- 1.327 “**Party**” means either Contracting Authority or Project Co, and “Parties” means both Contracting Authority and Project Co.
- 1.328 “**Pavement Design Report**” has the meaning given to that term in the Pavement Design and Rehabilitation Manual, as published by MTO.
- 1.329 “**Payment Certifier**” means the professional architect of record or the engineer of record for the Project.
- 1.330 “**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 National Bank of Canada 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.
- 1.331 “**Performance Bond**” means any of the Performance Bonds described in Section 17.4 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.332 “**Performance Guarantee of Construction Guarantor**” means a performance guarantee given by the Construction Guarantor in the form set out in Schedule 29 – Performance Guarantee of Construction Guarantor.
- 1.333 “**Performance Security**” means collectively, the Bonds and the Performance Guarantee of Construction Guarantor.
- 1.334 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.335 “**Permits, Licences, Approvals and Agreements**” means the Contracting Authority Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.336 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by Contracting Authority in accordance with Section 1.9 of Schedule 22 - Variation Procedure to the Project Agreement; and
  - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase Contracting Authority’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.337 “**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.
- 1.338 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Peel Regional Police and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.339 “**Pre-final Design Development Submittals**” has the meaning given in Section 11.1(d)(i)(A) of the Project Agreement.
- 1.340 “**Proceeding at Risk Matter**” has the meaning given in Section 14.6(a)(ii) of the Project Agreement.
- 1.341 “**Proceeding at Risk Notice**” has the meaning given in Section 14.6(a) of the Project Agreement.
- 1.342 “**Proceedings Against the Crown Act (Ontario)**” means the Proceedings Against the Crown Act, R.S.O. 1990, c. P.27.
- 1.343 “**Product**” means or “**Products**” mean material, machinery, equipment and fixtures forming the Works but does not include machinery and equipment used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.344 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.345 “**Progress Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.346 “**Prohibited Act**” has the meaning given in Section 49.1(a) of the Project Agreement.
- 1.347 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.348 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.349 “**Project Co**” has the meaning given in the introductory paragraph of the Project Agreement.
- 1.350 “**Project Co Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.351 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co in accordance with the Final Commissioning Program.

- 1.352 “**Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.353 “**Project Co Construction Event of Default**” means a Project Co Event of Default relating to a failure or breach by Project Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Works, excluding a default by the Construction Guarantor under the Performance Guarantee of Construction Guarantor.
- 1.354 “**Project Co Contamination**” has the meaning given in Section 18.2(a) of the Project Agreement.
- 1.355 “**Project Co Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.356 “**Project Co Event of Default**” has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.357 “**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.
- 1.358 “**Project Co Items of Interest or Value**” has the meaning given in Section 18.3(b) of the Project Agreement.
- 1.359 “**Project Co Land Inspection**” has the meaning given in Section 16.10(a) of the Project Agreement.
- 1.360 “**Project Co Party**” means:
- (a) the Construction Contractor;
  - (b) any person engaged by Project Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
  - (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.361 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Works in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals and Utility Agreements, and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement and as required by Applicable Law, but other than the Contracting Authority Permits, Licences, Approvals and Agreements. For certainty, “Project Co Permits,

- Licences, Approvals and Agreements” includes any road closure permits, or other consents required to enable Project Co to perform the Works.
- 1.362 “**Project Co Proposal Extracts**” has the meaning given in Schedule 13 - Project Co Proposal Extracts.
- 1.363 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.364 “**Project Co Species-at-Risk**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.365 “**Project Co Utility Infrastructure**” has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.366 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.367 “**Project Data**” means:
- (a) all Design Data; and
  - (b) any other materials, documents and or data acquired, brought into existence or used in relation to the Works or the Project Agreement,
- other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.368 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Senior Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.369 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.370 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by Contracting Authority, whether before or after Commercial Close, which may be connected in any way to:
- (a) the Works; or
  - (b) the Project Agreement.
- 1.371 “**Project Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.372 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.

- 1.373 “**Proposal Fee**” has the meaning given in the Request for Proposals.
- 1.374 “**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.
- 1.375 “**Proposed Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.376 “**Proprietor**” has the meaning given in Section 41.6(a) of the Project Agreement.
- 1.377 “**Protest Action**” means any trespass, 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 highway systems in general, occurring after Financial Close, but excluding any labour dispute or any other strike, lockout or industrial relations dispute or job action by, of or against workers carrying out any part of the Works.
- 1.378 “**Protesters**” has the meaning given in Section 11.13(a) of the Project Agreement.
- 1.379 “**Province**” means His Majesty the King in right of Ontario.
- 1.380 “**Province Persons**” means Contracting Authority Parties and, while attending in their official capacity at the Expansion Infrastructure and/or the Lands, the following:
- (a) any person to which authority is designated pursuant to Section 52.1 of the Project Agreement and any agents and employees of any such person;
  - (b) contractors of Contracting Authority or of any person to which authority is delegated pursuant to Section 52.1 of the Project Agreement and subcontractors of any tier and its or their directors, officers and employees;
- but excluding Project Co and any Project Co Party.
- 1.381 “**Province Person Third Party Beneficiaries**” has the meaning given in Section 53.17(a)(i) of the Project Agreement.
- 1.382 “**Public Communications**” has the meaning given in Schedule 18 – Communications.
- 1.383 “**Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.384 “**Quality Audit Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.385 “**Quality Director**” has the meaning given in Schedule 11 – Quality Management.
- 1.386 “**Quality Management System**” has the meaning given in Schedule 11 – Quality Management.

- 1.387 “**Quality Manual**” has the meaning given in Schedule 11 – Quality Management.
- 1.388 “**Quality Plans**” means the Quality Manual and the associated Quality Management Plans defined in Schedule 11 and other quality management plans developed by Project Co to control the quality of the Works.
- 1.389 “**Quality Management Plans**” or “**QMPs**” includes the DQMP, EQMP, CQMP, TQMP, PSQMP, IQAFMP and any other quality management plan required for the purposes of undertaking any material and substantial aspect of the Works.
- 1.390 “**Record Drawings**” means signed and sealed drawings prepared by the inspecting Professional Engineer, using as-built information, after verifying in detail the actual conditions of the completed project or applicable components as they are constructed, including any changes that were initiated due to site conditions or other causes and where all such changes are clearly identified through redlines or by means of any other format agreed by Contracting Authority.
- 1.391 “**Recoverable Tax**” has the meaning given in Section 4.16(c) of the Project Agreement.
- 1.392 “**Recovery Amount**” has the meaning given in Section 45.3(g) of the Project Agreement.
- 1.393 “**Recovery Schedule**” has the meaning given in Section 13.3(a)(iv)(A) of the Project Agreement.
- 1.394 “**Recovery Schedule Report**” has the meaning given in Section 13.3(a)(iv)(C) of the Project Agreement.
- 1.395 “**Reference Document**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.396 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.397 “**Reimbursement Event**” has the meaning given in Section 26.5(a) of the Project Agreement.
- 1.398 “**Reinstatement Plan**” has the meaning given in Section 11.9(f) of the Project Agreement.
- 1.399 “**Reinstatement Works**” has the meaning given in Section 11.9(b)(vi) of the Project Agreement.
- 1.400 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Highway Specific Change in Law.
- 1.401 “**Relevant Conviction**” means a conviction under the *Criminal Code* (Canada) for which no pardon has been granted.
- 1.402 “**Relief Event**” has the meaning given in Section 33.1(a) of the Project Agreement.

- 1.403 “**Request for Payment Approval**” has the meaning given in Section 11.32(d) of the Project Agreement.
- 1.404 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on December 3, 2021, as amended from time to time.
- 1.405 “**Required Amount**” has the meaning given in Section 11.17(b) of the Project Agreement.
- 1.406 “**Response Protocol**” has the meaning given in Schedule 18 – Communications.
- 1.407 “**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 the Sponsors consider unacceptable in their 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 the Sponsors in their sole discretion);
  - (d) in the case of an individual, (i) 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) has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
  - (e) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years

prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;

- (f) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
  - (g) is subject to a material claim of Contracting Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Contracting Authority’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
  - (h) has a material interest in the production of tobacco products.
- 1.408 “**Review Procedure**” means the procedure set out in Schedule 10 - Review Procedure.
- 1.409 “**Review Procedure Activities**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.410 “**Review Procedure Activities Register**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.411 “**Road Safety Audit**” has the meaning given in Schedule 15-1 – Definitions and Reference Documents.
- 1.412 “**SC LD Commencement Date**” has the meaning given in Section 46.5 of the Project Agreement.
- 1.413 “**Scheduled Final Completion Date**” means the date that is 12 months following Substantial Completion.
- 1.414 “**Scheduled First Milestone Payment Completion Date**” means [REDACTED].
- 1.415 “**Scheduled Milestone Payment Completion Date**” means either the Scheduled First Milestone Payment Completion Date or the Scheduled Second Milestone Payment Completion Date, as applicable, and the term “**Scheduled Milestone Payment Completion Dates**” means the Scheduled First Milestone Payment Completion Date and the Scheduled Second Milestone Payment Completion Date.
- 1.416 “**Scheduled Second Milestone Payment Completion Date**” means [REDACTED].
- 1.417 “**Scheduled Substantial Completion Date**” means [REDACTED], as such date may be extended pursuant to Section 31 of the Project Agreement.

- 1.418 “**SC Liquidated Damages**” means the liquidated damages to be paid pursuant to Section 46.5 of the Project Agreement which shall be in the amount of \$[REDACTED] per Business Day.
- 1.419 “**Seasonal Works**” means any seasonal adjustment required to complete the Project Co Commissioning, as applicable, or any sodding, planting, or other soft landscaping that cannot be completed prior to Substantial Completion due to seasonal impacts.
- 1.420 “**Seasonal Works Certification Date**” has the meaning given in Section 24.11(e) of the Project Agreement.
- 1.421 “**Seasonal Works Completion Period**” means the period of time described in Section 24.10(a)(ii) of the Project Agreement within which Project Co is required to complete all Seasonal Works.
- 1.422 “**Seasonal Works Holdback**” has the meaning given in Section 24.9(b)(ii) of the Project Agreement.
- 1.423 “**Seasonal Works List**” has the meaning given in Section 24.9(a)(ii) of the Project Agreement.
- 1.424 “**Second Milestone Payment**” means \$[REDACTED].
- 1.425 “**Second Milestone Payment Completion Date**” has the meaning given in Section 24.16A.2(e)(i) of the Project Agreement.
- 1.426 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.427 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.428 “**Senior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, all to the extent set out in the Financial Model at such time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount is only to the extent applied for the purposes of the Project and excludes the Senior Debt Makewhole.
- 1.429 “**Senior Debt Makewhole**” means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “makewhole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to then pay to the Senior Lenders pursuant to the



- Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.
- 1.430 “**Senior Debt Service Amount**” means, for any period, the principal, interest and commitment fees payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to a Hedging Agreement between Project Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider under the relevant Hedging Agreement and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly.
- 1.431 “**Senior Lenders**” means, at any time, [REDACTED], and [REDACTED], and any additional lenders financing any Refinancing. For greater clarity, Senior Lenders excludes:
- (a) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns; and
  - (b) any Affiliate of Project Co, any Project Co Party or any Affiliate of a Project Co Party.
- 1.432 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.433 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
  - (b) adversely affects access by Project Co to such markets.
- 1.434 “**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.
- 1.435 “**Site**” means, at any time and from time to time, that portion of the Lands on which Project Co or any Project Co Party is engaged in any construction or demolition activities or is otherwise engaged in completing the Works or on which any of the Works have been commenced but not completed in their entirety or that is otherwise within the active construction footprint of the Works.

- 1.436 “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.437 “**Site Investigation Plan**” has the meaning given in Section 16.8(b)(iii) of the Project Agreement.
- 1.438 “**Site Investigation Reports**” has the meaning given in Section 16.8(b)(iii) of the Project Agreement.
- 1.439 “**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.
- 1.440 “**Species at Risk Act**” or “**SARA**” means the *Species at Risk Act* (S.C. 2002, c. 29).
- 1.441 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Section 4.1(c) of Schedule 17 - Environmental Obligations, but excluding Contracting Authority.
- 1.442 “**Standby Letter of Credit**” means the letter of credit delivered in accordance with Section 9.1(2) of the Request for Proposals.
- 1.443 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) of the Project Agreement.
- 1.444 “**Step-in Period**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.445 “**Structure**” means any permanent structure other than a building, including a bridge, dam or lock.
- 1.446 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.447 “**Subcontractor’s Direct Agreement**” means the agreement to be entered into among Contracting Authority, Project Co, the Construction Contractor and certain Subcontractors determined in accordance with the terms of the Project Agreement in the form set out in Schedule 3 – Subcontractor’s Direct Agreement.
- 1.448 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor, and any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.449 “**Substantial Completion**” means the point at which:
- (a) the Expansion Infrastructure has been completed in accordance with the Project Agreement, other than in respect of Minor Deficiencies and Seasonal Works;

- (b) the Payment Certifier appointed pursuant to Section 17.3(f) of the Project Agreement has certified the substantial performance of the Design and Construction Contract and the related certificate of substantial performance has been published, each in accordance with the *Construction Act*; and
- (c) all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies and Seasonal Works, have been satisfied.
- 1.450 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(e) of the Project Agreement.
- 1.451 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.452 “**Substantial Completion Deliverables**” has the meaning given in Section 24.8(d) of the Project Agreement.
- 1.453 “**Substantial Completion Deliverables List**” has the meaning given in Section 24.8(d) of the Project Agreement.
- 1.454 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.455 “**Substantial Completion Payment**” means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as at the end of the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, the following amounts (without duplication):
- (a) the Milestone Payments paid or payable by Contracting Authority up to the end of the last day of the agreed payment period ending immediately prior to the Substantial Completion Payment Date;
- (b) the Completion Holdback as at the Substantial Completion Payment Date;
- (c) any Legislative Holdback required to be maintained by Contracting Authority as at the Substantial Completion Payment Date; and
- (d) the Warranty Period Cash Amount, if applicable.
- 1.456 “**Substantial Completion Payment Date**” means the date that is 2 Business Days after the Substantial Completion Date.
- 1.457 “**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.

- 1.458 “**Surety**” means the person issuing the Bonds.
- 1.459 “**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.
- 1.460 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that, except for purposes of Section 4.17 of this Project Agreement, “**Taxes**” shall not include the Contracting Authority Taxes.
- 1.461 “**Technical Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.462 “**Technical Reference Date**” means five (5) Business Days prior to the Technical Submission Deadline.
- 1.463 “**Technical Reports**” means, collectively, the technical reports listed in Appendices B, C and D to this Schedule 1.
- 1.464 “**Technical Submission Deadline**” means October 12, 2022.
- 1.465 “**Temporary Works**” means works that are performed to serve a specific temporary function in the execution of the Works and in respect of which any resulting Infrastructure is removed at such time when its temporary use is no longer required.
- 1.466 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.467 “**Third Party Reinstatement Work**” has the meaning given in Section 11.9(b)(vi) of the Project Agreement.
- 1.468 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by Contracting Authority and reasonably required in connection with the development of the Expansion Infrastructure and the Works.
- 1.469 “**Total Capital Costs**” is equal to the sum of the Cost of the Works and the Cost of the Financing, less the Legislative Holdback amount.
- 1.470 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.

- 1.471 “**Traffic Management Plan**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.472 “**Traffic Quality Management Plan**” has the meaning given in Schedule 11 - Quality Management.
- 1.473 “**Trespassers**” has the meaning given in Section 11.13(a) of the Project Agreement.
- 1.474 “**Utilities**” means energy/power supplies, communication, data transmission, and waste recovery, including electricity, natural gas/fuel oil, water and sanitary waste.
- 1.475 “**Utility Agreement**” means any agreement entered into by Project Co with a Utility Company in connection with the design, removal, construction, installation, operation, repair, preservation, relocation or maintenance of Utility Infrastructure in, on, under, over or adjacent to the Lands and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time, but does not include an agreement entered into for Utility Relocation Works.
- 1.476 “**Utility Background Information**” means:
- (a) 2D composite Utility plans showing all known existing Utilities compiled from subsurface Utility engineering investigations;
  - (b) Utility information gathered from Preliminary Design Report subsurface Utility engineering investigations, and other supplementary records obtained in preparation of the Works; and
  - (c) a Utility relocation matrix containing a summary of status of all Utility Work by Utility Companies in preparation of the Works.
- 1.477 “**Utility Company**” means the owner or operator of any Utility Infrastructure.
- 1.478 “**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 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 but excluding Drainage Infrastructure.
- 1.479 “**Utility (Province) Agreement**” means any agreement entered into by the Province with a Utility Company pursuant to Section 11.8(e) of the Project Agreement;
- 1.480 “**Utility Relocation Contractors**” means any Contracting Authority or any person (not being, for avoidance of doubt, Project Co, or any Project Co Party or Additional Contactors) that carries out Utility Relocation Works.
- 1.481 “**Utility Relocation Works**” means the following work:

- (a) Gosfield North Communications relocation works as described in Conflict Nos. 19 and 20 (Belle River Road) of the ‘Highway 3 Utility Matrix’ document and where the completion date for such works is June 30, 2023, with June 30, 2023 being the Gosfield North Utility Relocation Works Completion Date;
- (b) Hydro One Network Inc relocation works as described in Conflict Nos. 8, 9, 10 and 11 (Belle River Road) of the ‘Highway 3 Utility Matrix’ document and where the completion date for such works is September 30, 2023, with September 30, 2023 being the Hydro One Belle River Road Utility Relocation Works Completion Date;
- (c) Hydro One Network Inc relocation works as described in Conflict Nos. 12, 13 and 14 (Essex Road 18) of the ‘Highway 3 Utility Matrix’ document and where the completion date for such works is September 30, 2023, with September 30, 2023 being the Hydro One Essex Road Utility Relocation Works Completion Date;
- (d) Enbridge O/A Union Gas relocation works as described in Conflict Nos. 29, 30, and 31 of the ‘Highway 3 Utility Matrix’ document and where the completion date for such works is September 30, 2023, with September 30, 2023 being the Enbridge Utility Relocation Works Completion Date;
- (e) The Town of Kingsville watermain relocation works as described in Conflict No. 25 at Division Road (Essex Road 29) of the ‘Highway 3 Utility Matrix’ document and where the completion date for such works is September 30, 2023, with September 30, 2023 being the Town of Kingsville Watermain Utility Relocation Works Completion Date; and
- (f) Bell relocation works as described in Conflict Nos. 1, 2, 3, 4, 5, 6, 7 of the ‘Highway 3 Utility Matrix’ document and where the completion date for such works is May 31, 2023, with May 31, 2023 being the Bell Utility Relocation Works Completion Date.

1.482 “**Utility Relocation Works Completion Date**” means respectively:

- (a) the Gosfield North Utility Relocation Works Completion Date;
- (b) the Hydro One Belle River Road Utility Relocation Works Completion Date;
- (c) the Hydro One Essex Road Utility Relocation Works Completion Date;
- (d) the Enbridge Utility Relocation Works Completion Date;
- (e) the Town of Kingsville Watermain Utility Relocation Works Completion Date; and
- (f) the Bell Utility Relocation Works Completion Date.

1.483 “**Utility Work**” means temporary and permanent installation, protection, removal and relocation works relating to Utility Infrastructure carried out in connection with or as part of the Works, including design, construction, installation, commissioning, protection,

removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, watermains, sanitary sewers and tile lines, and related and ancillary works, but does not include the Utility Relocation Works.

- 1.484 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.485 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.486 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.487 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.488 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.489 “**Warranty Period**” means the period beginning on the Substantial Completion Date and expiring on the date which is two years following the Substantial Completion Date.
- 1.490 “**Warranty Period Cash Amount**” has the meaning given in Section 11.17(c) of the Project Agreement.
- 1.491 “**Warranty Period 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 7 – Warranty Period Letter of Credit.
- 1.492 “**Warranty Period Security**” means either:
- (a) the Warranty Period Letter of Credit; or
  - (b) the Warranty Period Cash Amount, as the case may be.
- 1.493 “**Warranty Period Security Return Date**” means the date that is five Business Days following the date that is two years following the Substantial Completion Date.
- 1.494 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Expansion Infrastructure, completion and rectification of the Minor Deficiencies, completion of Seasonal Works and the performance of all other obligations of Project Co under the Project Agreement. For clarity, Works includes Temporary Works.
- 1.495 “**Works Area Micro-Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.496 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
  - (b) occurs after the date of the Project Agreement;

- (c) requires Project Co to perform any work of alteration, addition, Demolition, extension or variation in the quality or function of the Expansion Infrastructure which is not Works or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
- (d) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.
- 1.497 “**Works Committee**” has the meaning given in Section 14.1(a) of the Project Agreement.
- 1.498 “**Works Milestone**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.499 “**Works Report**” has the meaning given in Section 13.5(a) of the Project Agreement.
- 1.500 “**Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.501 “**Works Schedule Assumptions Report**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.502 “**Works Schedule Progress Report**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.503 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.504 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
2. **Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.



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- 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Article, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning

- amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws' has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any Province Person shall be construed having regard to the interactive nature of the activities of the Province Person and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications; or
  - (b) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and Contracting Authority's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
  - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".

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

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

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and of the Lands, including the Existing Expansion Infrastructure, carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.
- 2.33 In construing the Project Agreement, the rule known as the *contra proferentem* rule shall not apply, and the Parties waive the application of any such rule of law which otherwise would be applicable in connection with the construction of this Project Agreement to the effect that ambiguous or conflicting terms of provisions should be construed against the Party who (or whose counsel) drafted the Project Agreement.
- 2.34 The definition of “Junior Lenders” is not applicable as of the date of this Project Agreement, and accordingly, any references to “Junior Lenders”, “Junior Debt Amount”, “Junior Debt Makewhole” and “Junior Debt Service Amount” throughout the Project Agreement and any Ancillary Documents are not applicable as of the date of this Project Agreement. In the event that lenders are intended to be introduced as “Junior Lenders” in any Refinancing and/or other financing, Contracting Authority consent is required. If Contracting Authority consent is obtained, appropriate amendments will be made to this Project Agreement and the applicable Ancillary Documents.

**APPENDIX A**

**Contracting Authority Permits, Licences, Approvals and Agreements**

[REDACTED]

**APPENDIX B****Archaeological Report**

1. Stage 1 Archaeological Assessment Proposed Highway 3 Widening Essex County Road 34 (Talbot Road) to Highway 77 Part of Lots 3-5, Concession 9, Lots 5-8, Concession 8, Lots 7-10 Concession 7, Lots 9-11, Concession 6, Lots 11-12, Concession 5, Lot A Lots 261-265, and 269-270 Talbot Road W S Side, Lot 16, Concession 4 Lots 4-11, Concession 3 Eastern Division Geographic Township of Gosfield Town of Kingsville Essex County, Ontario, Revised Report, November 30, 2021, prepared by Timmins Martelle Heritage Consultants Inc.
2. Stage 1 Archaeological Assessment Proposed Highway 3 Widening Essex County Road 34 (Talbot Road) to Highway 77 Part of Lots 3-5, Concession 9, Lots 5-8, Concession 8, Lots 7-10 Concession 7, Lots 9-11, Concession 6, Lots 11-12, Concession 5, Lot A Lots 261-265, and 269-270 Talbot Road W S Side, Lot 16, Concession 4 Lots 4-11, Concession 3 Eastern Division Geographic Township of Gosfield Town of Kingsville Essex County, Ontario, Supplementary Documentation, Revised, November 30, 2021, prepared by Timmins Martelle Heritage Consultants Inc.
3. Stage 2 Archaeological Assessment Proposed Highway 3 Widening – 2021 Fieldwork 1.2 km east of Essex Road 23 to 1.1 km east of Essex Road 34 Part of Lots 3-5, Concession 9, Lots 5-8, Concession 8, Lots 7-10, Concession 7, Lots 9-11, Concession 6, Lots 11-12, Concession 5, Lot A, Lots 261-265, and 269-270 Talbot Road W S Side, Lot 16, Concession 4, Lots 4-11, Concession 3 Eastern Division Geographic Township of Gosfield Town of Kingsville Essex County, Ontario, Original Report, March 21, 2022, prepared by Timmins Martelle Heritage Consultants Inc.
4. Stage 2 Archaeological Assessment Proposed Highway 3 Widening 1.2 km east of Essex Road 23 to 1.1 km east of Essex Road 34 Part of Lots 3-5, Concession 9, Lots 5-8, Concession 8, Lots 7-10, Concession 7, Lots 9-11, Concession 6, Lots 11-12, Concession 5, Lot A, Lots 261-265, and 269-270 Talbot Road W S Side, Lot 16, Concession 4, Lots 4-11, Concession 3 Eastern Division Geographic Township of Gosfield Town of Kingsville Essex County, Ontario, Supplementary Documentation, March 22, 2022, prepared by Timmins Martelle Heritage Consultants Inc.
5. Stage 3 Archaeological Assessment, AaHp-52, Proposed Highway 3 Widening, Part of Lot 11, Concession 3 Eastern Division, Geographic Township of Gosfield, Town of Kingsville, Essex County, Ontario, September 30, 2022, prepared by Timmins Martelle Heritage Consultants Inc.

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**APPENDIX C****Environmental Reports**

1. Fish and Fish Habitat Existing Conditions and Impact Assessment Report, Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, July 26, 2021. Prepared by GHD.
2. Fish and Fish Habitat Existing Conditions and Impact Assessment Report Amendment Highway 3 Widening and Safety Enhancements Study, Essex County, Ontario Assignment Number: 3017-E-0012, GWP: 3021-18-00, September 23, 2022. Prepared by GHD.
3. Terrestrial Ecosystems Assessment Report, Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, November 23, 2021. Prepared by GHD.
4. Hydrogeological Assessment Report - Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, August 13, 2021. Prepared by GHD.
5. Contamination Overview Study - Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, February 12, 2021. Prepared by GHD.
6. Land Use Factors Report – Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, March 25, 2021. Prepared by GHD.
7. Noise Assessment Report – Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, March 7, 2022. Prepared by GHD.
8. Air Quality Impact Assessment Report – Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012 GWP 3021-18-00, August 12, 2021. Prepared by GHD.
9. Butternut Health Assessment Report for the Ministry of Transportation, Highway 3 Widening and Safety Enhancements Study, 1.2 km East of Essex County Road 23 Easterly to 1.1 km East of Essex County Road 34, Assignment No. 3017-E-0012, GWP 3021-18-00, May 26, 2021. Prepared by GHD.
10. Eastern Foxsnake Survey Results – Final, Highway 3 Improvements in the Town of Essex, GWP 317-98-00, August 7, 2020. Prepared by Parsons.

11. Highway 3 Project Area Soil Characterization, Kingsville, Ontario, September 22, 2022. Prepared by GHD.
12. Phase II Environmental Site Assessment, 39, 55, and 102 South Talbot Road Kingsville, Ontario, June 21, 2022. Prepared by GHD.
13. Assignment No. 3017-E-0012, G.W.P 3021-18-00, Culvert Relocations and Municipal Drain Realignments – C14, SC5 and EC2 Fisheries and Oceans Canada (DFO) Request for Review Highway 3 Widening and Safety Enhancements Study, Essex County, Ontario, September 23, 2022. Prepared by GHD.
14. Assignment No. 3017-E-0012, G.W.P 3021-18-00, Culvert Removal and Municipal Drain Realignment to Accommodate Cul-de-sac Construction – 9<sup>th</sup> Concession Road Drain and SC1 Fisheries and Oceans Canada (DFO) Request for Review Highway 3 Widening and Safety Enhancements Study, Essex County, Ontario, July 21, 2022. Prepared by GHD.
15. Assignment No. 3017-E-0012, G.W.P 3021-18-00, New Sideroad Culvert Installation Requiring Municipal Drain Realignment–SR8, SR9 and Entrance Culverts (EC3, EC4, EC5 and EC6) Fisheries and Oceans Canada (DFO) Request for Review Highway 3 Widening and Safety Enhancements Study, Essex County, Ontario. September 23, 2022. Prepared by GHD.
16. Assignment No. 3017-E-0012 G.W.P 3021-18-00, Municipal Drain Realignment and Entrance Culvert Relocation – EC11 and EC12 Fisheries and Oceans Canada (DFO) Request for Review Highway 3 Widening and Safety Enhancements Study, Essex County, Ontario, September 23, 2022. Prepared by GHD.



**APPENDIX D**

**Geotechnical Reports**

1. Foundation Investigation and Design Report, Various Creek Culvert Extensions, Highway 3 Widening and Safety Enhancements 1.2 km East of Essex County Road 23 to 1.1 km East of Essex County Road 34, Townships of Gosfield North / Gosfield South, District of Chatham, Town of Kingsville, Essex County, Ontario, Ministry of Transportation, Ontario, GWP 3021-18-00, January 13, 2022. Prepared by GHD.
2. Preliminary Pavement Design Report – GWP 3021-18-00, Highway 3 Widening, Windsor to Leamington, Phase 3, Contract 2, Essex County Road 23 to Essex County Road 34, December 23, 2020. Prepared by Peto MacCallum Ltd.
3. Pavement Engineering Technical Memorandum – GWP 3021-18-00, Preliminary Pavement Design Recommendations for Various Side Roads, Highway 3 Widening, Windsor to Leamington, Phase 3, Contract 2, July 14, 2022. Prepared by Peto MacCallum Ltd.

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

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

- 1.1 this Project Agreement;
- 1.2 the Lenders' Direct Agreement;
- 1.3 the Independent Certifier Agreement;
- 1.4 the CDB Member Statement and the CDB Member Agreement;
- 1.5 the Insurance Trust Agreement;
- 1.6 a notice of appointment of the Project Co Representative;
- 1.7 the Lending Agreements;
- 1.8 the Design and Construction Contract;
- 1.9 the Performance Guarantee of Construction Guarantor;
- 1.10 the Construction Contractor's Direct Agreement;
- 1.11 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by Project Co in accordance with this Project Agreement;
- 1.12 the Financial Model in electronic form;
- 1.13 an original of the Bonds required in accordance with this Project Agreement or as Contracting Authority may direct in accordance with the Insurance Trust Agreement;
- 1.14 the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;
- 1.15 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.16 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;

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- 1.17 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
  - 1.18 the opinion from counsel to Project Co, the Construction Contractor, the Construction Guarantor, and such other Project Co Parties as Contracting Authority may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to Contracting Authority and its counsel;
  - 1.19 the Proposed Works Schedule in form and substance satisfactory to Contracting Authority;
  - 1.20 evidence that the COR-Certified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by Financial Close, evidence that the COR-Qualified Construction Project Co Party has its current OHSAS 18001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
  - 1.21 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
  - 1.22 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a CAD-7, or, if a CAD-7 is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
  - 1.23 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a Workplace Injury Summary Report (WISR) or, if a WISR is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
  - 1.24 a certificate of an officer of Project Co certifying the corporate structure of Project Co; and
  - 1.25 such other documents as the parties may agree, each acting reasonably.

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

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

- 2.1 this Project Agreement;

- 2.2 the Lenders' Direct Agreement;
- 2.3 the Construction Contractor's Direct Agreement;
- 2.4 the Independent Certifier Agreement;
- 2.5 the CDB Member Statement and the CB Member Agreement;
- 2.6 the Insurance Trust Agreement;
- 2.7 a notice of appointment of the Contracting Authority Representative;
- 2.8 a certificate of an officer of IO and a declaration of management signed by an officer of IO substantially in the forms attached as Appendix D and Appendix E respectively to this Schedule 2; and
- 2.9 such other documents as the parties may agree, each acting reasonably.

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

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

- 3.1 within 5 Business Days following Financial Close, (a) one printed copy of the Financial Model, and (b) two electronic copies of the Financial Model, each on a USB key; and
- 3.2 within 15 Business Days following Financial Close, two USB keys, each containing electronic copies of all of the documents described in Sections 1 and 2 of this Schedule 2.

## APPENDIX A


## FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

**TO:** His Majesty the King in right of Ontario (“**Contracting Authority**”)  
**AND TO:** The Minister of Transportation (the “**Minister**”)  
**AND TO:** Ontario Infrastructure and Lands Corporation (“**IO**”)  
**RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 18<sup>th</sup> day of May, 2023 between Contracting Authority, as represented by the Minister, as represented by IO and GIP HWY 3 Inc. (“**Project Co**”)

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1. The undersigned acknowledges that:
  - (a) The Project will proceed as a public-private partnership project under the MOI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
  - (b) The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
    - (i) The public interest is paramount.
    - (ii) Value for money must be demonstrable.
    - (iii) Appropriate public control/ownership must be preserved.
    - (iv) Accountability must be maintained.
    - (v) All processes must be fair, transparent and efficient.
  - (c) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
2. The undersigned undertakes to comply with all Applicable Law in any direction or order issued by Contracting Authority or IO to the extent that the direction or order affects the Works.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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

**GIP HWY 3 INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

## APPENDIX B

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

## Certificate of an Officer of



(the "Corporation")

**TO: HIS MAJESTY THE KING IN RIGHT OF ONTARIO ("Contracting Authority")**

**AND TO: THE MINISTER OF TRANSPORTATION**

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

**AND TO: AIRD & BERLIS LLP**

**AND TO: [Counsel to Project Co]**

**AND TO: [Lenders' Agent]**

**AND TO: [Counsel to Lenders]**

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

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

- (d) Attached hereto as **Schedule “C”** is a true and complete copy of a unanimous shareholders’ agreement between the shareholders of the Corporation and the Corporation (the “**Unanimous Shareholders’ Agreement**”) executed on or before the date hereof. The Unanimous Shareholders’ Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [REDACTED] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders’ Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the *Business Corporations Act* (Ontario) (the “**Act**”), the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders’ Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders’ Agreement or in any other agreement binding on the Corporation which:
- (i) restrict or limit the powers of the Corporation to enter into:
- (1) a certain project agreement with Contracting Authority made as of <\*>, 20<\*> (as the same may be amended, supplemented, restated



or otherwise modified from time to time, the “**Project Agreement**”) pursuant to which the Corporation will design, build and finance the Expansion Infrastructure;

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

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

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

## 2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the [directors/shareholders] of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Articles, By-laws or the Unanimous Shareholders’ Agreement;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or Ontario governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
  - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.

- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or Ontario governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

3. No Breach or Default

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

4. Specimen Signatures

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

NAME	POSITION	SIGNATURE
<*>		_____
<*>		_____
<*>		_____
<*>		_____

5. Capital

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

ISSUED SHARES	REGISTERED OWNER

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Name:  
Title:

## APPENDIX C

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

&lt;\*&gt;, 20&lt;\*&gt;

**His Majesty the King in right of Ontario**c/o Ontario Infrastructure and Lands  
Corporation  
1 Dundas Street West, Suite 2000  
Toronto, Ontario  
M5G 1Z3**The Minister of Transportation**c/o Ontario Infrastructure and Lands  
Corporation  
1 Dundas Street West, Suite 2000  
Toronto, Ontario  
M5G 1Z3**Ontario Infrastructure and Lands  
Corporation**1 Dundas Street West, Suite 2000  
Toronto, Ontario  
M5G 1Z3**Aird & Berlis LLP**Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario  
M5J 2T9

Dear Sirs/Mesdames:

**Re: Highway 3 Widening Project – Essex to Leamington**

We have acted as counsel to [REDACTED] (“**Project Co**”) and [REDACTED] (the “**Construction Contractor**”) in connection with the public-private partnership transaction whereby Project Co has agreed to enter into a design, build and finance agreement for the Highway 3 Widening Project – Essex to Leamington. *[Note: Additional parties, including guarantors, to be added depending on consortium structure and/or the financing package.]*

This opinion is being delivered to His Majesty the King in right of Ontario (“**Contracting Authority**”), the Minister of Transportation (the “**Minister**”), Ontario Infrastructure and Lands Corporation (“**IO**”) and their counsel pursuant to Section 1.17 of Schedule 2 to the Project Agreement made as of May 18, 2023 between Contracting Authority, as represented by the Minister, as represented by IO and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

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

In our capacity as counsel to Project Co and the Construction Contractor, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of <\*>, 20<\*>):

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

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

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

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

### **Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of Project Co

and the Construction Contractor (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

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

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

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

In connection with the opinions set forth in paragraphs 4, 6, 8, 12 and 14 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 20[●] (the “**CC Opinion**”), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

### **Assumptions**

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

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

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

### **Opinions**

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

#### *Incorporation and Existence*

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

#### *Corporate Power and Capacity*

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

#### *Corporate Authorization*

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

#### *Execution and Delivery*

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

---

*Enforceability*

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

*No Breach or Default*

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

*Regulatory Approvals*

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

**Qualifications**

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

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.



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

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

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

Yours very truly,

**[REDACTED]**

## APPENDIX D

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

**TO:** [Project Co] (“Project Co”)  
**AND TO:** [Counsel to Project Co]  
**AND TO:** [Lenders’ Agent] (the “Lenders’ Agent”)  
**AND TO:** [Lenders’ Counsel]  
**RE:** Project Agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 18th day of May, 2023 between His Majesty the King in right of Ontario, as represented by the Minister of Transportation, as represented by the Corporation and Project Co

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

1. Attached hereto as Schedule “A” is a true and complete copy of (i) an extract of By-Law No. 1 regarding the ability of the directors of the Corporation to appoint any person to sign and deliver on behalf of the Corporation specific contracts or agreements; (ii) an excerpt of the delegation of signing authority; (iii) resolutions of the directors of the Corporation relating to the delegation of signing authority; and (iv) the Infrastructure and Commercial Projects Charter outlining the Infrastructure & Commercial Projects Committee’s ability to recommend for approval the decision of the Corporation to proceed with commercial and financial close of an infrastructure project (collectively, the “**Corporate Approvals**”). The Corporate Approvals are the only approvals of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as Schedule “B” is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the successful bidder for the Highway 3 Widening Project – Essex to Leamington (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Infrastructure (the “**Minister**”) has not given a direction pursuant to subsection 4(3) of the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended (the “**Act**”) that limits the scope of the objects of the Corporation as they are set out in subsection 4(1) of the Act.

4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the declaration of management of the Corporation of even date herewith) relating to the Highway 3 Widening Project – Essex to Leamington on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

Name	Position	Signature
<*>	<*>	_____

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

---

**APPENDIX E****FORM OF DECLARATION OF MANAGEMENT****ONTARIO INFRASTRUCTURE AND LANDS CORPORATION****(the “Corporation”)****DECLARATION OF MANAGEMENT**

**WHEREAS** His Majesty the King in right of Ontario, as represented by the Minister of Transportation, as represented by the Corporation and GIP HWY 3 Inc., propose to enter into a Project Agreement relating to the Highway 3 Widening Project – Essex to Leamington (the “**Project**”);

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

**NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY  
DECLARES THAT:**

1. by resolution of the board of directors of the Corporation passed on [REDACTED], the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Project Documents and do all such other acts and things as the Corporation’s management may determine to be necessary or advisable to carry out the transactions contemplated by the applicable Project Documents;
2. the Corporation’s management may execute and deliver the Project Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Project Documents from time to time (collectively, together with the Project Documents, the “**Documents**”) all in such form and on such terms as the management of the Corporation executing such Documents in accordance with this declaration may approve, such approval to be evidenced conclusively by the execution of such Documents by the Corporation’s management; and
3. the Project Documents to be executed and delivered by the Corporation in connection with the Project and the transactions and obligations contemplated thereunder are for the purpose of carrying out the objects of the Corporation and the Corporation shall not and will not assert the contrary against any person dealing with the Corporation or any person who has acquired an interest in the Project from the Corporation.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023

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Name: <\*>  
Title: <\*>

**SCHEDULE 3**

**SUBCONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 18<sup>th</sup> day of May, 2023

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

(hereinafter referred to as “**Contracting Authority**”)

– AND –

**GIP HWY 3 INC., [REDACTED]**

(“**Project Co**”)

– AND –

**[REDACTED]**

(the “**Construction Contractor**”)

– AND –

**<\*>**, a corporation incorporated under the laws of **[Ontario]**

(the “**Subcontractor**”)

**WHEREAS:**

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

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

## 1. DEFINITIONS

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

- (a) “**Approved Purposes**” has the meaning given in the Project Agreement.
- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Construction Contractor**” has the meaning given in the preamble.
- (d) “**Construction Contractor's Direct Agreement**” has the meaning given in the Project Agreement.
- (e) “**Contracting Authority**” has the meaning given in the preamble.
- (f) “**Default Notice**” has the meaning given in Section 5(a).
- (g) “**Design and Construction Contract**” has the meaning given in the Project Agreement.
- (h) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (i) “**Lenders**” has the meaning given in the Project Agreement.
- (j) “**Lenders' Direct Agreement**” has the meaning given in the Project Agreement.
- (k) “**Party**” means Contracting Authority, the Construction Contractor, the Subcontractor or Project Co, and “**Parties**” means Contracting Authority, the Construction Contractor, the Subcontractor and Project Co.
- (l) “**Project**” has the meaning given in the Project Agreement.
- (m) “**Project Agreement**” means the project agreement made on or about May 18, 2023 between Contracting Authority and Project Co.
- (n) “**Project Co**” has the meaning given in the preamble.
- (o) “**Project Co Partners**” has the meaning given in the Project Agreement.
- (p) “**Step-In-Notice**” has the meaning given in Section 6(a).
- (q) “**Subcontract**” means the subcontract <\*>. *[Note: Describe applicable subcontract.]*
- (r) “**Subcontractor**” has the meaning given in the preamble.



- (s) “**Substitute**” has the meaning given in Section 6(b).
- (t) “**Works**” has the meaning given in the Project Agreement.

## 2. INTERPRETATION

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

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

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

### 3. CONFLICT IN DOCUMENTS

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

#### 4. AGREEMENTS

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

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

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

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

#### 6. NOVATION OF THE SUBCONTRACT

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

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

- (b) Contracting Authority may at any time if:

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

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

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

continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Construction Contractor shall be conditional on the satisfaction of those obligations to Construction Contractor; and

- (iv) at Contracting Authority's request, the Subcontractor shall enter into, and shall cause any guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(c)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Contracting Authority or the Substitute, as applicable, and the Subcontractor, acceptable to Contracting Authority and the Subcontractor, each acting reasonably, on substantially the same terms as the Subcontract.
- (d) The Construction Contractor shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Subcontract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Subcontract, ongoing supervisory activities and scheduling.
- (e) The rights granted by Sections 6(c) and 6(d) shall be of no force or effect if, at any time the Subcontractor receives a Novation Notice, the Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Subcontract that it is or has validly exercised those step-in rights. If the Subcontractor receives any such notice on the same day as a Novation Notice, the Novation Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Novation Notice shall be effective.
- (f) If Contracting Authority gives a Novation Notice within the time provided hereunder at any time after the Subcontractor has terminated the Subcontract or treated it as having been repudiated by Construction Contractor or discontinued the Subcontractor's performance thereunder in accordance with the terms of this Subcontractor's Direct Agreement, the Subcontractor agrees that the Subcontract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Subcontractor's reasonable costs for re-commencing the obligations it has under the Subcontract and the Subcontractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Subcontract or having treated it as being repudiated by Construction Contractor or having discontinued its performance thereunder.

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

## 7. SUBCONTRACTOR LIABILITY

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

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

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

## 8. PROJECT CO AND CONSTRUCTION CONTRACTOR AS PARTY

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

## 9. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.

- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Subcontractor’s Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 48.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co, the Construction Contractor and the Subcontractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor’s Direct Agreement except as may be permitted under the Design and Construction Contract.
- (d) The Subcontractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor’s Direct Agreement except as may be permitted under the Subcontract.

**10. NOTICES**

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

If to Contracting Authority: Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to: Ontario Infrastructure and Lands  
Corporation  
1 Dundas Street West, 20th Floor  
Toronto, Ontario  
M5G 1Z3

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co: GIP HWY 3 Inc.



Attn: [REDACTED]

Email: [REDACTED]

If to the Construction  
Contractor:

[REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

If to the Subcontractor:

[Address]

Attn.: &lt;\*&gt;

Email: &lt;\*&gt;

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 10.
- (c) Any Party to this Subcontractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
- (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
- (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 10.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.



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

## **11. AMENDMENTS**

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

## **12. WAIVER**

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

## **13. RELATIONSHIP BETWEEN THE PARTIES**

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

## **14. CONTRACTING AUTHORITY DESIGNATE**

At any time and from time to time, the Contracting Authority may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Subcontractors' Direct Agreement and Project Co, the Construction Contractor and the Subcontractor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Contracting Authority has notified Project Co, the Construction Contractor and the Subcontractor in writing that such designated person is no longer the person designated by the Contracting Authority 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 Contracting Authority shall advise Project Co, the Construction Contractor and the Subcontractor in writing of any designation hereunder. The rights and obligations of the parties to this Subcontractors' Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and the Subcontractor acknowledge the right of the Contracting Authority to delegate administrative responsibilities hereunder as set forth in this Section 14.

## 15. ENTIRE AGREEMENT

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

## 16. SEVERABILITY

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

## 17. ENUREMENT

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

## 18. GOVERNING LAW AND JURISDICTION

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

**19. FURTHER ASSURANCE**

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

**20. LANGUAGE OF AGREEMENT**

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

**21. COUNTERPARTS**

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

**22. COPYRIGHT NOTICE**

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

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

Per: \_\_\_\_\_

Name: <\*>

Title: <\*>

Per: \_\_\_\_\_

Name: <\*>

Title: <\*>

I/We have authority to bind the corporation.

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

Per: \_\_\_\_\_

Name: <\*>

Title: <\*>

Per: \_\_\_\_\_

Name: <\*>

Title: <\*>

I/We have authority to bind the corporation.

**GIP HWY 3 INC.**

Per: \_\_\_\_\_

Name: <\*>

Title: <\*>

Per: \_\_\_\_\_

Name: <\*>

Title: <\*>

I/We have authority to bind the corporation.

[CONSTRUCTION CONTRACTOR]

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

[SUBCONTRACTOR]

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**SCHEDULE 4**

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 18<sup>th</sup> day of May, 2023

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the  
Minister of Transportation

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the  
Minister of Transportation as represented by Ontario Infrastructure and Lands  
Corporation

(hereinafter referred to as “**Contracting Authority**”)

– AND –

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

(the “**Lenders' Agent**”)

– AND –

**GIP HWY 3 INC., [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Works, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- C. The Lenders' Agent has agreed to enter into this “**Lenders' Direct Agreement**” with Contracting Authority in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- D. With a view to ensuring that Contracting Authority is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the



Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with Contracting Authority throughout the Project Term.

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

## 1. DEFINITIONS

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

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

- (i) “**Contracting Authority Project Documents**” means the Project Agreement and all other documents to which Contracting Authority and Project Co are parties pursuant to or in connection with the Project Agreement.
- (j) “**Crown**” has the meaning given in the Project Agreement.
- (k) “**Cure Period**” means the period starting on the date of delivery of a Default Notice and ending on the later of the expiry of (i) the Notice Period and (ii) the Remedial Plan Period.
- (l) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (m) “**Design and Construction Contract**” has the meaning given in the Project Agreement.
- (n) “**Enforcement Action**” means any acceleration of amounts due and owing to any of the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (o) “**Enforcement Event**” means an event of default as defined in the Lending Agreements which permits an Enforcement Action, or any other event which permits an Enforcement Action.
- (p) “**Exercise Date**” has the meaning given in Section 12(b).
- (q) “**Extension Period**” has the meaning given in Section 7(g)(iii).
- (r) “**Financial Close**” has the meaning given in the Project Agreement.
- (s) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (t) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (u) “**Irrevocable Direction**” means an irrevocable direction from Project Co addressed to Contracting Authority and the Lenders’ Agent dated the date hereof.
- (v) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the Lenders lending to a Suitable Substitute.
- (w) “**Lenders**” has the meaning given in the Project Agreement.
- (x) “**Lenders’ Agent**” has the meaning given in the preamble.
- (y) “**Lenders’ Construction Contractor Direct Agreement**” means the direct agreement among the Lenders’ Agent, the Construction Contractor and Project Co.

- (z) “**Lenders’ Consultant**” has the meaning given in the Project Agreement.
- (aa) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (bb) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (cc) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and expiring on the latest of:
  - (i) thirty (30) days from the start of the Notice Period;
  - (ii) ninety (90) days from the start of the Notice Period, provided that the Lenders’ Agent provides notice to Contracting Authority within thirty (30) days from the start of the Notice Period (A) confirming that the Lenders’ Agent has delivered the Default Notice to the Lenders and (B) identifying each of the Lenders; or
  - (iii) on the applicable expiry date as specified in Section 7(g), provided that the Lenders’ Agent:
    - (A) within thirty (30) days from the start of the Notice Period, provides the notice to Contracting Authority in Section 1(bb)(ii) above;
    - (B) within sixty (60) days from the start of the Notice Period, provides notice to Contracting Authority confirming that the Lenders, in consultation with the Lenders’ Consultant, intend to develop a Remedial Plan within; and
    - (C) within seventy-five (75) days from the start of the Notice Period, delivers such Remedial Plan to Contracting Authority.
- (dd) “**Novation Date**” has the meaning given in Section 10(a).
- (ee) “**Novation Notice**” has the meaning given in Section 10(a).
- (ff) “**Party**” means any of Contracting Authority, Project Co or the Lenders’ Agent, and “**Parties**” means all of Contracting Authority, Project Co and the Lenders’ Agent.
- (gg) “**Project**” has the meaning given in the Project Agreement.
- (hh) “**Project Agreement**” means the project agreement made on or about the date hereof between Contracting Authority and Project Co.
- (ii) “**Project Co**” has the meaning given in the preamble.
- (jj) “**Project Co Party**” has the meaning given in the Project Agreement.

- (kk) “**Remedial Plan**” means a plan specifying the remedial action to be taken in respect of the relevant Project Co Event of Default, including a schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied.
- (ll) “**Remedial Plan Period**” means the period starting on the date of acceptance by Contracting Authority of a Remedial Plan and ending on the earliest of:
- (i) the date the Project Co Event of Default(s) to which such Remedial Plan relates is remedied; and
  - (ii) the date set out in such Remedial Plan by which the relevant Project Co Event of Default(s) is proposed to be remedied.
- (mm) “**Restricted Person**” has the meaning given in the Project Agreement.
- (nn) “**Security**” means the Performance Security, the Insurance and any security interests granted to the Lenders’ Agent pursuant to the Security Documents.
- (oo) “**Security Documents**” means all security granted by Project Co or others to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
- (i) [REDACTED];
  - (ii) [REDACTED];
  - (iii) [REDACTED];
  - (iv) [REDACTED];
  - (v) [REDACTED]; and
  - (vi) [REDACTED].
- (pp) “**Step-In Date**” means the date on which Contracting Authority receives a Step-In Notice from the Lenders’ Agent.
- (qq) “**Step-In Notice**” means the notice given by the Lenders’ Agent to Contracting Authority pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (rr) “**Step-In Period**” means the period from the Step-In Date up to and including the earliest of:
- (i) the Step-Out Date;

- (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7);
- (iii) the date that a transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
- (iv) the date falling twelve (12) months after the Step-In Date.
- (ss) “**Step-Out Date**” means the date falling thirty (30) days after the date on which Contracting Authority receives a Step-Out Notice.
- (tt) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (uu) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (vv) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (ww) “**Suitable Substitute**” means a person, approved in writing by Contracting Authority in accordance with Sections 10(b) and 10(c), which:
  - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Contracting Authority Project Documents; and
  - (ii) employs individuals having the appropriate qualifications, experience and technical competence and has the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Contracting Authority Project Documents.
- (xx) “**Termination Date**” has the meaning given in the Project Agreement.
- (yy) “**Works**” has the meaning given in the Project Agreement.

## 2. INTERPRETATION

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

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct

Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.

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

be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

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

### **3. CONFLICT OF DOCUMENTS**

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

### **4. TERM**

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

### **5. AGREEMENTS AND SECURITY**

- (a) Project Co, the Lenders and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 8.3 (*Changes to Lending Agreements and Refinancing*) of the Project Agreement.

- (b) Project Co represents and warrants that the Lending Agreements have been entered into and negotiated on an arms' length basis.
- (c) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other voluntary repayment of loan, as applicable, under the Lending Agreements, without the prior written consent of Contracting Authority, acting in its sole discretion. In exercising its sole discretion to grant consent, Contracting Authority shall be entitled to request and consider, and Project Co shall be required to provide within ten (10) Business Days following a request by Contracting Authority, amongst other things and not limited to, the following:
  - (i) written certification by an officer of Project Co of the remaining Project Costs (as defined in the Lending Agreements) accrued and unpaid or expected to be incurred to achieve Substantial Completion and to fund any Project Accounts (as defined in the Lending Agreements) then not funded and required to be funded at or prior to the then anticipated prepayment and/or redemption (as approved by the Lenders' Consultant by the Substantial Completion Date);
  - (ii) written certification by an officer of Project Co that no Funding Shortfall (as defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
  - (iii) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that the Project Co's calculation in Section 5(c)(i) and Project Co's certification in Section 5(c)(ii) is, in the opinion of the Lenders' Consultant, correct;
  - (iv) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that no incremental delay in achieving the Substantial Completion Date (beyond the Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and
  - (v) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (d) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.



- (e) The Lenders' Agent acknowledges having received a copy of the Contracting Authority Project Documents as at the date of Financial Close.
- (f) Contracting Authority acknowledges having received copies of the Lending Agreements as at the date of Financial Close, and confirms that they are in form and substance satisfactory to Contracting Authority as at the date of Financial Close.
- (g) Contracting Authority acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Contracting Authority Project Documents.
- (h) Any agreement provided to Project Co pursuant to Section 16.6(a) (*Non-Disturbance Agreement*) of the Project Agreement shall be in form satisfactory to the Lenders' Agent, acting reasonably.
- (i) Subject to the next sentence, Project Co and the Lenders' Agent hereby authorize and instruct Contracting Authority (and Contracting Authority agrees) to pay all sums payable to Project Co under the Project Agreement in accordance with the Irrevocable Direction. Project Co and Contracting Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, Contracting Authority shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (j) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, Contracting Authority shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (k) The Lenders' Agent shall appoint the Lenders' Consultant, and Project Co shall be responsible for the payment of all fees, costs and expenses of the Lenders' Consultant. The Lenders' Consultant acts as an agent for the Lenders' Agent and the Lenders with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide, without delay, Contracting Authority with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(k) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to Contracting Authority.

- (l) The Lenders' Agent represents and warrants to Contracting Authority that it is the duly authorized agent of the Lenders to enter into this Lenders' Direct Agreement and act on their behalf in connection with this Lenders' Direct Agreement and that, pursuant to the Lending Agreements, the Lenders' Agent has full power and authority to bind the Lenders under this Lenders' Direct Agreement.

## **6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT**

- (a) The Lenders' Agent shall promptly notify Contracting Authority of any Enforcement Event, any Enforcement Action, any notice from the Lenders or Lenders' Agent to Project Co accelerating the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements and any notice from the Lenders or Lenders' Agent to Project Co demanding repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of Province of Ontario's highway system so as to affect public confidence in the Province of Ontario highway systems or the Project.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements except where the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person.

## **7. TERMINATION OF PROJECT AGREEMENT BY CONTRACTING AUTHORITY**

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions expressly set forth in, this Section 7 relating to termination of the Project Agreement for a Project Co Event of Default, Contracting Authority may, at any time, serve Notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) Subject to Section 7(e), at any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)),

Contracting Authority shall not exercise any right it may have to terminate or serve Notice terminating the Project Agreement for a Project Co Event of Default unless:

- (i) Contracting Authority promptly delivers notice (a “**Default Notice**”) to the Lenders’ Agent setting out the Project Co Event of Default(s) in reasonable detail;
  - (ii) as soon as possible and not later than thirty (30) days after the date of a Default Notice, Contracting Authority delivers notice (an “**Indebtedness Notice**”) to the Lenders’ Agent setting out:
    - (A) all amounts owed by Project Co to Contracting Authority and any other existing liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, as of the date on which Contracting Authority sent the Default Notice; and
    - (B) all amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
  - (iii) the Notice Period has expired and the Lenders’ Agent has not delivered a Step-In Notice.
- (c) At any time after the expiry of the time to send an Indebtedness Notice but no later than three (3) Business Days after receipt by Contracting Authority of the Appointed Representative Notice, if Contracting Authority discovers:
- (i) amounts owed by Project Co to Contracting Authority and any other existing liabilities and obligations of Project Co to Contracting Authority as of the date on which Contracting Authority sent the Default Notice; or
  - (ii) amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority on or before the end of the Cure Period,
- but which were not included in the Indebtedness Notice, Contracting Authority shall deliver notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.
- (d) Subject to Section 7(e), during the Step-In Period, Contracting Authority shall not terminate the Project Agreement on grounds:
- (i) that the Lenders’ Agent has served a Step-In Notice or enforced any Security Document; or

- (ii) arising prior to the Step-In Date of which Contracting Authority was aware prior to the Step-In Date (having made due inquiry) and whether or not continuing at the Step-In Date unless:
  - (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling one-hundred and twenty (120) days after the Longstop Date; or
  - (B) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
- (iii) arising solely in relation to Project Co.
- (e) Notwithstanding anything herein, Contracting Authority shall be entitled to terminate the Project Agreement by Notice to Project Co and the Appointed Representative at any time:
  - (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to Contracting Authority on or before the Step-In Date;
  - (ii) if any amount, liability or obligation referred to in Section 7(b)(ii)(B) has not been paid or performed, as applicable, on or before the later of:
    - (A) last day of the Cure Period (provided that in the case of any amount owing, such amount has become due and payable in accordance with the terms of the Project Agreement); or
    - (B) the lapse of any cure period that would otherwise be applicable thereto under the Project Agreement;
  - (iii) if any amount, liability or obligation included in a Subsequent Indebtedness Notice has not been paid or performed, as applicable, on or before the later of:
    - (A) last day of the Cure Period (provided that in the case of any amount owing, such amount has become due and payable in accordance with the terms of the Project Agreement);
    - (B) the lapse of any cure period that would otherwise be applicable thereto under the Project Agreement; or
    - (C) the date falling thirty (30) days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent;
  - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement; or

- (v) during the Remedial Plan Period, Contracting Authority determines, in its sole discretion, that the obligations under a Remedial Plan necessary to achieve all elements of such Remedial Plan have not been performed in accordance with its terms.
- (f) Notwithstanding anything in this Lenders’ Direct Agreement, Contracting Authority may at any time (including during a Step-In Period) exercise its right under Section 37.3 (*Termination for Convenience*) of the Project Agreement.
- (g) If the Lenders’ Agent has delivered to Contracting Authority a Remedial Plan within seventy-five (75) days from the start of the Notice Period, then Contracting Authority shall, acting in its sole discretion and, within fifteen (15) days of receipt of such Remedial Plan, provide notice to the Lenders’ Agent either:
  - (i) rejecting such Remedial Plan, in which case the Notice Period will expire on the date that is the later of: (A) ninety (90) days from the start of the Notice Period or (B) ten (10) Business Days after receipt by Lenders’ Agent of such notice of rejection; or
  - (ii) advising that Contracting Authority has accepted such Remedial Plan; or
  - (iii) advising that Contracting Authority is willing to negotiate such Remedial Plan in order to arrive at a final Remedial Plan acceptable to Contracting Authority, in which case, the Notice Period shall be extended for a further period of fifty-five (55) days from the date of such notice or such longer period of time as Contracting Authority may agree in its sole discretion (the “**Extension Period**”).

If Contracting Authority does not provide any notice in subsection (i), (ii) or (iii) above, Contracting Authority shall be deemed to have rejected such Remedial Plan on the date that is fifteen (15) days of receipt of such Remedial Plan, in which case the Notice Period will expire on the date that is the later of: (A) ninety (90) days from the start of the Notice Period or (B) ten (10) Business Days after the date of such deemed rejection.

If Contracting Authority does provide the notice set out in subsection (iii) above, and Contracting Authority and the Lenders’ Agent have not reached an agreement on a final Remedial Plan acceptable to Contracting Authority, acting in its sole discretion, by the end of the Extension Period, then the Notice Period shall expire ten (10) Business Days thereafter.

## 8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give Contracting Authority a Step-In Notice at any time:
  - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served), other than during a Remedial Plan Period;
  - (ii) during the Notice Period; or
  - (iii) during which an Enforcement Event is subsisting.
- (b) At least five (5) Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver notice (an "**Appointed Representative Notice**") to Contracting Authority of:
  - (iv) its intention to deliver a Step-In Notice; and
  - (v) the identity of the Lenders' Agent's proposed Appointed Representative.

There can only be one Appointed Representative at any one time.

- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Contracting Authority Project Documents.
- (d) During the Step-In Period, Contracting Authority shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Contracting Authority Project Documents. Project Co agrees to be bound by all such dealings between Contracting Authority and the Appointed Representative to the same extent as if they had been between Contracting Authority and Project Co.
- (e) No later than sixty (60) days before the date of a transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective, or on a date otherwise agreed to, acting reasonably, Contracting Authority and the Appointed Representative shall determine, acting reasonably, if any extension to the Scheduled Substantial Completion Date or the Longstop Date is required.

## 9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver notice (a "**Step-Out Notice**") to Contracting Authority to terminate the Step-In Period on the Step-Out Date.

- (b) On expiry of the Step-In Period:
  - (i) the rights and obligations of the Appointed Representative in relation to Contracting Authority under the Contracting Authority Project Documents will be assumed by Project Co to the exclusion of the Appointed Representative;
  - (ii) Contracting Authority will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Contracting Authority Project Documents; and
  - (iii) the Appointed Representative and Contracting Authority shall be and hereby are released from all obligations and liabilities to one another under the Contracting Authority Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

#### 10. NOVATION TO SUITABLE SUBSTITUTE

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

the Lenders' Agent may deliver to Contracting Authority and the Appointed Representative (if any) notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents to a proposed transferee, together with all information reasonably necessary for Contracting Authority to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than thirty (30) days from the date on which Contracting Authority receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).
- (b) Contracting Authority shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. Contracting Authority shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents is approved by Contracting Authority as a Suitable Substitute, on or before the date falling thirty (30) days after the later of the date of receipt by Contracting Authority of the Novation Notice and the date of receipt of any additional information requested by Contracting Authority. For greater certainty,

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

- (c) Contracting Authority shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for Contracting Authority to withhold its approval if:
- (i) the proposed transferee does not meet the requirements set out in the definition of Suitable Substitute;
  - (ii) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to Contracting Authority, acting reasonably, in respect of such breaches;
  - (iii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
  - (iv) the terms of any proposed lending agreements or proposed security interests to be granted by the Suitable Substitute to the Lender Representative could reasonably be expected to materially and adversely affect (A) the ability of the Suitable Substitute to perform under the Contracting Authority Project Documents, or (B) the interests of Contracting Authority, including having the effect of increasing any liability of Contracting Authority, whether actual or potential.
- (d) If Contracting Authority withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to Contracting Authority, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) If the proposed transferee is approved by Contracting Authority as a Suitable Substitute, then on the Novation Date:
- (i) Project Co and Contracting Authority will be released from their obligations under the Contracting Authority Project Documents to each other, and the Suitable Substitute and Contracting Authority will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against Contracting Authority under the Contracting Authority Project Documents and the rights of Contracting Authority against Project Co under the Contracting Authority Project



Documents will be cancelled, and the Suitable Substitute and Contracting Authority will acquire those same rights against each other;

- (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
  - (A) an agreement between Contracting Authority and the Suitable Substitute, on substantially the same terms as each Contracting Authority Project Document; and
  - (B) an agreement among Contracting Authority, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement; and
- (iv) any subsisting ground for termination by Contracting Authority of the Project Agreement for a Project Co Event of Default will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## 11. TRANSFERS

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

## 12. CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the Construction Contractor's Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Construction Contractor's Direct Agreement, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation to a Suitable Substitute pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, Contracting Authority shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Construction Contractor's Direct Agreement to step into and/or novate the Design and Construction Contract in accordance with the Construction Contractor's Direct Agreement.

- (c) Following the Exercise Date, Contracting Authority shall not do anything to prejudice the rights under the Contracts which are not transferred to it pursuant to the Construction Contractor's Direct Agreement.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of the Design and Construction Contract assumed or novated by Contracting Authority pursuant to the Construction Contractor's Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor's Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Design and Construction Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, Contracting Authority shall not, prior to the date on which this Lenders' Direct Agreement terminates:
  - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Construction Contractor's Direct Agreement (and/or the Design and Construction Contract) from the Construction Contractor;
  - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
  - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

Contracting Authority agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

### **13. SUBCONTRACTOR'S DIRECT AGREEMENT**

Notwithstanding any provision in a Subcontractor's Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any Subcontractor's Direct Agreement unless:

- (a) the Project Agreement and the Design and Construction Contract have been terminated;

- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement; or
- (c) Contracting Authority is entitled to exercise its rights under the Construction Contractor's Direct Agreement pursuant to Section 12(b).

#### 14. PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

Notwithstanding any provision in the Performance Guarantee of Construction Guarantor given by the Construction Guarantor, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of the Performance Guarantee of Construction Guarantor unless:

- (a) the Project Agreement has been terminated; or
- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement.

#### 15. PROCEEDING AT RISK AND PROJECT CO DELAY NOTICES

- (a) The Parties acknowledge that Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent of any Proceeding at Risk Matter following the issuance of the Proceeding at Risk Notice issued pursuant to Section 14.6(a) (*Proceeding at Risk*) of the Project Agreement, together with a copy of such notice.
- (b) The Parties acknowledge that, if Contracting Authority delivers notice to Project Co pursuant to Section 3.1 (*Development of Project Works Schedules*), Contracting Authority may, acting reasonably, give notice to the Lenders' Agent that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority's opinion that Project Co is failing to maintain the schedule.

#### 16. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 16.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person (in this Section 16(b), the "assignee") to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 48.1 (*Project Co Assignment*) of the Project Agreement and the provisions of the Lending Agreements, and shall provide Notice to Contracting Authority and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption

agreement with, and in form and substance satisfactory to, Contracting Authority and the Lenders' Agent, each acting reasonably. Contracting Authority, the Lenders' Agent, Project Co and the assignee shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

- (c) Contracting Authority may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person (in this Section 16(c), the "assignee") to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 48.2 (*Contracting Authority Assignment*) of the Project Agreement, and shall provide Notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (f) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to any person (in this Section 16(d), the "assignee") as permitted by the Lending Agreements, and shall provide notice to Project Co and Contracting Authority of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and Contracting Authority on substantially the same terms as this Lenders' Direct Agreement and Project Co and Contracting Authority shall enter into such new agreement with the assignee. Project Co, Contracting Authority, the Lenders' Agent and the assignee shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

## 17. NOTICES

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

If to Contracting Authority:

Ministry of Transportation  
659 Exeter Road

London, Ontario  
N6E 1L3

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

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

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]  
Phone: [REDACTED]

If to Project Co:

GIP HWY 3 Inc.

Attn: [REDACTED]  
Email: [REDACTED]

If to the Construction Guarantor:

[REDACTED]  
Attn: [REDACTED]  
Email: [REDACTED]

- (b) Where any notice is given to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 17(b) and the time of deemed receipt of such notice shall be based on the time of the electronic transmission.

- (c) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 17(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt or deemed receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 17(f) and 17(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third (3<sup>rd</sup>) Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by electronic 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 given by hand delivery or by electronic submission in accordance with this Section 17.
- (f) If any notice given by hand delivery or electronic transmission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic transmission shall be deemed to have been received by the recipient on the day it is transmitted or, if applicable, the later date set out in Section 17(f) only if an electronic transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **18. CONTRACTING AUTHORITY DESIGNATE**

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

of any such designation. Project Co and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 18.

## **19. AMENDMENTS**

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

## **20. WAIVER**

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

## **21. RELATIONSHIP BETWEEN THE PARTIES**

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

## **22. ENTIRE AGREEMENT**

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

## **23. SEVERABILITY**

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lenders' Direct Agreement. If any

provision of this Lenders' Direct Agreement is so declared invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lenders' Direct Agreement as near as possible to its original intent and effect.

#### **24. ENUREMENT**

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

#### **25. GOVERNING LAW AND JURISDICTION**

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

#### **26. DISPUTE RESOLUTION PROCEDURE**

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

#### **27. FURTHER ASSURANCE**

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

#### **28. LANGUAGE OF AGREEMENT**

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

#### **29. COUNTERPARTS**

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by



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

**30. CONFIDENTIALITY**

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 41 (Confidentiality/Communications) of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Lenders' Agent to comply with Applicable Law.

**31. COPYRIGHT NOTICE**

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

***[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]***

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

**HIS MAJESTY THE KING IN RIGHT  
OF ONTARIO** as represented by the  
Minister of Transportation

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**HIS MAJESTY THE KING IN RIGHT  
OF ONTARIO** as represented by the  
Minister of Transportation as represented  
by Ontario Infrastructure and Lands  
Corporation

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**[THE LENDERS' AGENT]**

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**GIP HWY 3 INC.**

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

By: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**SCHEDULE 5**

**CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 18<sup>th</sup> day of May, 2023

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

(hereinafter referred to as “**Contracting Authority**”)

– AND –

**GIP HWY 3 INC., [REDACTED]**

(“**Project Co**”)

– AND –

**[REDACTED]**

(the “**Construction Contractor**”)

– AND –

**[REDACTED]**

(the “**Construction Guarantor**”)

**WHEREAS:**

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

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

1. **DEFINITIONS**

In this Construction Contractor’s Direct Agreement, unless the context otherwise requires:

- (a) **“Approved Purposes”** has the meaning given in the Project Agreement.
- (b) **“Business Day”** has the meaning given in the Project Agreement.
- (c) **“Construction Contractor”** has the meaning given in the preamble.
- (d) **“Construction Guarantor”** has the meaning given in the preamble.
- (e) **“Contracting Authority”** has the meaning given in the preamble.
- (f) **“Default Notice”** has the meaning given in Section 5(a).
- (g) **“Design and Construction Contract”** has the meaning given in the Project Agreement.
- (h) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (i) **“Lenders”** has the meaning given in the Project Agreement.
- (j) **“Lenders’ Direct Agreement”** has the meaning given in the Project Agreement.
- (k) **“Party”** means Contracting Authority, the Construction Contractor, the Construction Guarantor or Project Co, and **“Parties”** means Contracting Authority, the Construction Contractor, the Construction Guarantor and Project Co.
- (l) **“Project”** has the meaning given in the Project Agreement.
- (m) **“Project Agreement”** means the project agreement made on or about May 18, 2023 between Contracting Authority and Project Co.
- (n) **“Project Co”** means has the meaning given in the preamble.
- (o) **“Step-In Notice”** has the meaning given in Section 6(a).
- (p) **“Substitute”** has the meaning given in Section 6(a).
- (q) **“Works”** has the meaning given in the Project Agreement.

## 2. INTERPRETATION

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

- (a) The headings in this Construction Contractor's Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor's Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor's Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor's Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor's Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor's Direct Agreement taken as a whole; and
  - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be

without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

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

### 3. CONFLICT IN DOCUMENTS

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

### 4. AGREEMENTS

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Design and Construction Contract without the prior written

consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Construction Contractor shall provide to Contracting Authority a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

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

#### 5. **NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE**

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

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to Contracting Authority setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Design and Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of 5 Business Days of Contracting Authority receiving the Default Notice:
  - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Design and Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
  - (ii) the Construction Contractor has not received a Step-In Notice from Contracting Authority,



provided that if, within such period of 5 Business Days, Contracting Authority agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

## 6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
- (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of Contracting Authority receiving a Default Notice; or
  - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Design and Construction Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Design and Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
- (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Design and Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the Construction Contractor under the Design and Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to Contracting

Authority if Contracting Authority pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;

- (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Design and Construction Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security, as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
  - (iv) at Contracting Authority's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Contracting Authority or the Substitute, as applicable, and the Construction Contractor, acceptable to Contracting Authority and the Construction Contractor, each acting reasonably, on substantially the same terms as the Design and Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Design and Construction Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Design and Construction Contract, ongoing supervisory activities and scheduling.
  - (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Design and Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor

receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.

- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Design and Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Design and Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Design and Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Design and Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

## 7. CONSTRUCTION CONTRACTOR LIABILITY

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

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

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

**8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.

**9. CONSTRUCTION GUARANTOR AS PARTY**

The Construction Guarantor agrees with Contracting Authority that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii) and hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 48.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Design and Construction Contract.

**11. NOTICES**

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

If to Contracting Authority: Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to: Ontario Infrastructure and Lands  
Corporation  
1 Dundas Street West, 20th Floor  
Toronto, Ontario  
M5G 1Z3

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co: GIP HWY 3 Inc.

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Construction Contractor: [REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

If to the Construction Guarantor: [REDACTED]

Attn.: [REDACTED]  
Email: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):

- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

## 12. AMENDMENTS

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

## 13. WAIVER

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

**14. RELATIONSHIP BETWEEN THE PARTIES**

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

**15. ENTIRE AGREEMENT**

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

**16. SEVERABILITY**

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

**17. ENUREMENT**

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

**18. GOVERNING LAW AND JURISDICTION**

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



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

#### 19. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Contracting Authority may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Construction Contractor's Direct Agreement and Project Co, the Construction Contractor and the Construction Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Construction Contractor and the Construction Guarantor in writing that such designated person is no longer the person designated by the Contracting Authority 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 Contracting Authority shall advise Project Co, the Construction Contractor and the Construction Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this Construction Contractor's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and the Construction Guarantor acknowledge the right of the Contracting Authority to delegate administrative responsibilities hereunder as set forth in this Section 19.

#### 20. FURTHER ASSURANCE

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

#### 21. LANGUAGE OF AGREEMENT

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

#### 22. COUNTERPARTS

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

#### 23. COPYRIGHT NOTICE



The Parties acknowledge that King’s Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Construction Contractor’s Direct Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation

**GIP HWY 3 INC.**

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**[Construction Contractor]**

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the  
Corporation

**[Construction Guarantor]**

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the  
Corporation

**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of the 18<sup>th</sup> day of May, 2023

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

(hereinafter referred to as “**Contracting Authority**”)

– AND –

**GIP HWY 3 INC., [REDACTED]**

(“**Project Co**”)

– AND –

**[REDACTED]** (the “**Independent Certifier**”)

**WHEREAS:**

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

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

## 1. DEFINITIONS

### 1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Adjudication Fee”** means the fee payable by Contracting Authority and Project Co to the Independent Certifier for the Independent Certifier conducting Adjudications as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
  - (ii) **“Certification Services”** means:
    - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
    - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
    - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
  - (iii) **“Certification Services Variation”** means any change to the Certification Services.
  - (iv) **“Contract Material”** means all material:
    - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
    - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,  
  
including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
  - (v) **“Fee”** means the fees payable by Contracting Authority and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.

- (vi) “**Hourly Rate**” means the rate charged by each Independent Certifier Team Member per hour as listed in Appendix B to this Independent Certifier Agreement for Certification Services identified in item (v) of Appendix A to this Independent Certifier Agreement, including any services required to provide additional work.
- (vii) “**Independent Certifier**” has the meaning given in the preamble.
- (viii) “**Intellectual Property**” means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
- (ix) “**Other Advice**” has the meaning given in Section (u) of Appendix A to this Independent Certifier Agreement.
- (x) “**PA Parties**” and “**PA Party**” have the meanings given in the recitals to this Independent Certifier Agreement.
- (xi) “**Project Agreement**” means that certain project agreement made on or about the date hereof between Contracting Authority and Project Co with respect to the design, construction and financing of Highway 3 Widening Project – Essex to Leamington.
- (xii) “**Total Fixed Fee**” means the Fee for all Certification Services other than those identified in item (v) of Appendix A to this Independent Certifier Agreement, which shall not exceed the amount specified in Appendix B to this Independent Certifier Agreement.

## 2. INTERPRETATION

### 2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
  - (i) words denoting the singular number include the plural and vice versa;
  - (ii) words denoting individuals include corporations and vice versa;
  - (iii) headings are for convenience only and do not affect interpretation;
  - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
  - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

- (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
- (vii) words denoting any gender include all genders;
- (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (ix) a reference to “\$” is to Canadian currency;
- (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
- (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
- (xii) unless otherwise indicated, all time periods will be strictly construed.

## **2.2 Obligations and Exercise of Rights by PA Parties**

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

## **3. ROLE OF THE INDEPENDENT CERTIFIER**

### **3.1 Engagement**

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.



- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Sections 9.4 and 9.5 of this Independent Certifier Agreement.

### **3.2 Acknowledgement of Independent Certifier**

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

### **3.3 Standard of Care**

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

### **3.4 Duty of Independent Judgment**

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
  - (ii) act reasonably and professionally;
  - (iii) act in a timely manner:
    - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
    - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
  - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

### **3.5 Authority to Act**

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
  - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
  - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

### **3.6 Knowledge of the PA Parties' Requirements**

- (a) The Independent Certifier warrants that:
- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
  - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
  - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
  - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at or on the Expansion Infrastructure and Lands including restrictions on any such access or protocols that are required; and
  - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

### **3.7 Co-ordination and Information by Independent Certifier**

- (a) The Independent Certifier must:
  - (i) fully cooperate with the PA Parties;
  - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
  - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
  - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

### **3.8 Conflict of Interest**

- (a) The Independent Certifier warrants that:
  - (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as a technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
  - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

### **3.9 Independent Certifier Personnel**

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program shall:
  - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, The Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;

- (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable highway;
  - (iii) have an understanding of the appropriate MTO standards, guidelines and policies related to commissioning for highways, as well as other applicable highway commissioning standards; and
  - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish Contracting Authority with evidence satisfactory to Contracting Authority of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.

### **3.10 Minimize Interference**

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

## **4. ROLE OF THE PA PARTIES**

### **4.1 Assistance**

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

### **4.2 Instructions in Writing**

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

### **4.3 Information and Services**

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

**4.4 Additional Information**

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Contracting Authority Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
  - (ii) Project Co or Contracting Authority, as the case may be, must arrange the provision of the required information, documents or particulars.

**4.5 Right to Enter and Inspect**

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, the Expansion Infrastructure or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
- (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Expansion Infrastructure and the Works;
  - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Expansion Infrastructure and the Works; and
  - (iii) not causing any damage to the Site, the Expansion Infrastructure or the Works.

**4.6 PA Parties Not Relieved**

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

**4.7 PA Parties not Liable**

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

## 5. CERTIFICATION QUALITY PLAN

### 5.1 Certification Quality Plan

- (a) The Independent Certifier must:
- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Contracting Authority Representative and the Project Co Representative;
  - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
  - (iii) if satisfactory to each of the Contracting Authority Representative and the Project Co Representative, implement such certification quality plan; and
  - (iv) if not satisfactory to each of the Contracting Authority Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Contracting Authority Representative and the Project Co Representative, and implement it if satisfactory to each of the Contracting Authority Representative and the Project Co Representative.

### 5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
- (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
  - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the Contracting Authority Representative or the Project Co Representative.

## 6. SUSPENSION

### 6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or

- (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

## 6.2 Costs of Suspension

- (a) The Independent Certifier will:
  - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
  - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

## 6.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

## 7. INSURANCE AND LIABILITY

### 7.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
  - (i) professional liability insurance:
    - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
    - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
  - (ii) commercial general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must

provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

## 7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

## 8. PAYMENT FOR SERVICES

### 8.1 Payment of Fee and Adjudication Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay [REDACTED] of the Fee to the Independent Certifier in accordance with the invoicing process specified in Section D of Appendix B.
- (b) In consideration of a representative of the Independent Certifier conducting Adjudications if required pursuant to Schedule 27 – Dispute Resolution Procedure of the Project Agreement, and subject to an alternative determination regarding payment of costs being made by the Adjudicator, each PA Party shall pay one half of the Adjudication Fee for each Adjudication conducted based on the rates set out in Appendix B to this Schedule 6.
- (c) The obligation of each PA Party to pay to the Independent Certifier [REDACTED] of the Fee, or one half of the Adjudication Fee (or other portion of the Adjudication Fee as determined by the Adjudicator) is a several obligation, and neither PA Party shall have any liability in respect of the non payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (d) The Fee and Adjudication Fee include all taxes (except for HST), overhead and profit, all labour and materials, insurance costs, travel, hospitality, and incidental expenses (except for food expenses which are to be excluded), and all other overhead including any fees or other charges required by law to perform the Certification Services and conduct the Adjudications, subject to Appendix B to this Schedule 6.
- (e) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.



## **9. CERTIFICATION SERVICES VARIATIONS**

### **9.1 Notice of Certification Services Variation**

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
- (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
  - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Contracting Authority Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

### **9.2 No Adjustment**

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

### **9.3 External Services**

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

### **9.4 Certification Services Variation Procedure**

- (a) The Contracting Authority Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the Contracting Authority Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.

- 
- (c) Each of the Contracting Authority Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
- (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
  - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

### **9.5 Cost of Certification Services Variation**

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
- (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
  - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
  - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Contracting Authority Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

## **10. TERM AND TERMINATION**

### **10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the Final Completion Date; or
  - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

### **10.2 Notice of Breach**

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
  - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

**10.3 Termination for Breach**

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

**10.4 Termination for Financial Difficulty or Change in Control**

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
  - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

**10.5 Termination for Convenience**

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

**10.6 Independent Certifier's Rights upon Termination for Convenience**

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
  - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
    - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
    - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

**10.7 Procedure upon Termination**

- 
- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
- (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
  - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
  - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

## 10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

## 10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.8, 12.9 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## 11. INDEMNITY

### 11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for

whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);

- (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
  - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.2 Independent Certifier to Save PA Parties Harmless**

- (a) Subject to the provisions of Section 11.2(b), the Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) No action or other proceeding shall be commenced by any PA Party against the Independent Certifier or the Independent Certifier's representative acting as an Adjudicator pursuant to Schedule 27 – Dispute Resolution Procedure of the Project Agreement, for any act done, or any alleged neglect or default in the execution or intended execution of the Adjudicator's duties or powers in connection with such Adjudication, unless the act or omission is shown to have been in bad faith.
- (c) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
  - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (d) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.3 Conduct of Claims**

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

## 12. GENERAL

### 12.1 Entire Agreement

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

### 12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

### 12.3 Waiver

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

### 12.4 Notices

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

If to Contracting Authority: Ministry of Transportation

659 Exeter Road  
London, Ontario  
N6E 1L3

Attn.: [REDACTED]  
Email: [REDACTED]

with a copy to:

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

Attn.: [REDACTED]  
Email: [REDACTED]



If to Project Co:

GIP HWY 3 Inc.  
[REDACTED]

Attn: [REDACTED]  
Email: [REDACTED]

If to Independent Certifier:

[REDACTED]

Attn.:   
Email: 

- (b) Where any notice is provided or submitted to a party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a party’s failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party’s receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

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- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 12.4.
  - (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
  - (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

## 12.5 Transfer and Assignment

- (a) The Independent Certifier:
  - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
  - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

## 12.6 Governing Laws and Jurisdictions

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



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

### 12.7 Contracting Authority Designate

- (a) At any time and from time to time, Contracting Authority may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until Contracting Authority has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by Contracting Authority 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. Contracting Authority shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of Contracting Authority to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

### 12.8 Confidentiality

- (a) The Independent Certifier must ensure that:
- (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
  - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

### 12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material

provided to the Independent Certifier or created or required to be created by either PA Party.

- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

#### **12.10 Amendment**

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

#### **12.11 Severability**

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

#### **12.12 Enurement**

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

#### **12.13 Counterparts**

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

#### 12.14 Copyright Notice

- (a) The Parties acknowledge that King’s Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Independent Certifier Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**GIP HWY 3 INC.**

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

**[INDEPENDENT CERTIFIER]**

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

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**APPENDIX A****CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall do the following:

- (a) Receive and monitor the progress of drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (b) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design;
- (c) Estimate amount of the costs for Contracting Authority to rectify defects, deficiencies or non-compliant items in the Work, together with all other damages suffered by Contracting Authority for draw down on the Warranty Letter of Credit where applicable;
- (d) Review information relating to Delay Events and Compensation Events;
- (e) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party;
- (f) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks;
- (g) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning and Completion Requirements to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion;
- (h) Prior to any certification, consider the views and comments of both Project Co and Contracting Authority in relation to the satisfaction of the conditions for certification;
- (i) Conduct inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement;
- (j) Review relevant documentation, including certificates and approvals, Permits, Licences, Approvals, and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement;

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- (k) Monitor the requirements, progress and results of the Project Co Commissioning and Contracting Authority Commissioning;
- (l) Monitor the conduct of the Commissioning Tests during any seasonal performance testing prescribed in the Final Commissioning Program including, without limitation, any re-tests, review of Commissioning Tests and results, copies of any certificates or other Permits, Licences, Approvals, and Agreements received by Project Co in connection with any Commissioning Tests conducted during the seasonal performance testing, review and accepting performance testing forms required to be delivered pursuant to the Final Commissioning Program and to perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to commissioning of the Expansion Infrastructure after Substantial Completion, as applicable, as either party may request and to report to each of the parties thereon;
- (m) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (p) above and to advise Project Co and Contracting Authority with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware;
- (n) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, (i) with respect to the Substantial Completion Certificate, perform the activities set out in Section 24.4(c) of the Project Agreement, and (ii) with respect to each of the Substantial Completion and the Final Completion Certificate, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
- (A) issue the applicable certificate; or
  - (B) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate;
- (o) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (o) of this Appendix A until the issuance of the applicable certificate;
- (p) In consultation with and being informed by the respective views of Project Co and Contracting Authority other than in respect of Section (p)(iii) of this Appendix A:
- (i) prepare, based on the Independent Certifier's review of the Works, the Minor Deficiencies List and the Seasonal Works List in accordance with Sections 24.9 of the Project Agreement, which will include:
    - (A) estimates of the cost for Contracting Authority to complete and rectify the Minor Deficiencies and the Seasonal Works;

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- (B) the time for Project Co to complete and rectify the Minor Deficiencies and the Seasonal Works; and
  - (C) a schedule for the completion and rectification of the Minor Deficiencies and the Seasonal Works;
- (ii) amend the Minor Deficiencies List and the Seasonal Works List in accordance with Sections 24.9(e) and (f) of the Project Agreement, which will specify a rectification time for any newly added Minor Deficiency that is no greater than 10 Business Days from the date of the issuance of such amended Minor Deficiencies List or Seasonal Works List, as applicable, or such longer time period as agreed by Contracting Authority and Project Co.
  - (iii) certify (i) the completion and rectification of Minor Deficiencies in accordance with Section 24.11(b), Section 24.11(c) and Section 24.11(d) of the Project Agreement, and (ii) the completion of the Seasonal Works in accordance with Section 24.11(d) of the Project Agreement, taking into consideration Contracting Authority’s opinion as to whether such Minor Deficiencies have been completed and rectified and as to whether the Seasonal Works have been completed.
- (q) Review and observe installation of all equipment, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into the Expansion Infrastructure by Contracting Authority or any agent or contractor of Contracting Authority either before or after Substantial Completion and provide a report to Contracting Authority and Project Co identifying any damage to the Expansion Infrastructure which has been caused as a result of the installation of such Installed Equipment into the Expansion Infrastructure by Contracting Authority, its contractors and/or agents;
  - (r) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement;
  - (s) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services;
  - (t) Provide periodic reports to the PA Parties, copying IO, as follows:
    - (i) a progress report within fifteen Business Days after each month’s end or as otherwise agreed by the PA Parties (the “**Monthly Report**”); and
    - (ii) accompanying the Monthly Reports delivered for the months of May, August, November and February, a quarterly report (the “**Quarterly Report**”) for the quarters ending June 30th, September 30th, December 31st and March 31<sup>st</sup> respectively, in substantially the form as that in Appendix E and that contains the



following information confirmed to the best of the Independent Certifier's professional knowledge and judgment:

- (A) the extent (expressed as a percentage) of completion of the Works as of the date of the Quarterly Report;
  - (B) the value of the Works completed as of the date of the Quarterly Report;
  - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the end of the applicable quarter and for the next four quarters; and
  - (D) the forecasted value of the Works anticipated to be completed as of the end of the applicable quarter and for the next four quarters.
- (u) Provide advice on other matters that may arise that both PA Parties may jointly require (“**Other Advice**”);
  - (v) Review the reports and plans prepared by Project Co pursuant to Section 13.5(a) of the Project Agreement and produce a monthly IC progress report for the PA Parties;
  - (w) Issue a certificate for payment of the Legislative Holdback pursuant to Section 4.5(a) of the Project Agreement;
  - (x) Issue a certificate for payment of the Finishing Holdback in accordance with Section 4.6(a) of the Project Agreement;
  - (y) Prepare the Substantial Completion Deliverables List pursuant to Section 24.8(d) of the Project Agreement and, if applicable, amend such list pursuant to Section 24.8(e) of the Project Agreement;
  - (z) Perform Adjudications pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement; and
  - (aa) Services provided by the Independent Certifier pursuant to the Project Agreement not otherwise covered under (a) – (aa) of this Appendix A of this Schedule 6.

**APPENDIX B**

**INDEPENDENT CERTIFIER FEE**

**[REDACTED]**

**APPENDIX C**

**INDEPENDENT CERTIFIER PERSONNEL**

[REDACTED]

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**APPENDIX D****CONDUCT OF CLAIMS**

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both Contracting Authority and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

- (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
  - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
  - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or

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circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:

- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

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

APPENDIX E

[ON THE INDEPENDENT CERTIFIER’S LETTERHEAD]

[date]

Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3

Attention: <\*>

with a copy to:

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

Attention: <\*>

and to:

[Project Co]  
[Address]

Attention: <\*>

Dear <\*> and <\*>:

This report, for the quarter ending <\*>, is delivered to you pursuant to Section (t)(ii) of Appendix A of the Independent Certifier Agreement between His Majesty the King in right of Ontario as represented by the Minister of Transportation and His Majesty the King in right of Ontario, as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation (hereinafter referred to as “**Contracting Authority**”), GIP HWY 3 Inc., (“**Project Co**”) and as dated May 18<sup>th</sup>, 2023 (the “**Agreement**”). Terms not otherwise defined herein have the meaning ascribed to them in the Agreement.

All values stated herein are based on the Cost of the Works and are exclusive of HST. This report has taken into account the following information: [insert particulars of sources of information (e.g., works reports, site visits) used to prepare the report].

Based on our analysis of the foregoing, we confirm the following to the best of our professional knowledge and judgment:

- As of the date hereof, the value of the Works is \$<\*> and the Works are <\*>% complete.
- At the end of this quarter, the estimated value of the Works will be \$<\*> and the Works are forecasted to be % complete.

We estimate that the value of the Works and the extent of their completion will be as follows for the next four quarters (not including the present quarter):

	[quarter end date]	[quarter end date]	[quarter end date]	[quarter end date]
\$				
%				

We have prepared this report for the specific use of the Ministry of Transportation, Project Co and Contracting Authority. This letter is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly,

---

**[Name and Signature of Independent Certifier]**



**SCHEDULE 7A**  
**STANDBY LETTER OF CREDIT**

**[REDACTED]**

SCHEDULE 7B

WARRANTY PERIOD LETTER OF CREDIT

*[Note: The Warranty Period Letter of Credit must be issued by a bank acceptable to Contracting Authority, acting reasonably, and must be callable at the bank’s counters in Toronto, Ontario.]*

Letter of Credit: #[•]

Date: [•]

Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3

Attn: <\*>

with a copy to:

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

Attn: [President and Chief Executive Officer]

Dear Sir/Madam:

**RE: Highway 3 Widening Project – Essex to Leamington**

At the request of our client, [REDACTED] (“Project Co”), we, [insert name and address of issuing bank], hereby issue in favour of Ministry of Transportation and Ontario Infrastructure and Lands Corporation (hereinafter referred to as “Contracting Authority”) an irrevocable standby letter of credit (the “Letter of Credit”) in the amount of <\*>.

The amount available under this Letter of Credit is payable to Contracting Authority, at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by one officer of Contracting Authority certifying that Contracting Authority is entitled to draw on this Letter of Credit pursuant to Section 11.17 of a project agreement dated May 18, 2023 (as amended from time to time, the “Project Agreement”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert expiry date] (the “Expiry Date”), and Contracting Authority may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be extended.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, by courier, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #<\*>.

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[NAME OF ISSUING BANK]

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE 8**

**INTENTIONALLY DELETED**

**SCHEDULE 9**

**KEY INDIVIDUALS**

**A. Key Individuals – Works**

[REDACTED]

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**SCHEDULE 10****REVIEW PROCEDURE****1. WORKS SUBMITTALS**

- 1.1 The provisions of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by the Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure prior to Substantial Completion, or after Substantial Completion in respect of the completion of the applicable Minor Deficiencies and Seasonal Works, and, if directed by Contracting Authority, the correction, rectification and Making Good of any Works, the Expansion Infrastructure or any part thereof as required pursuant to Sections 11.14, 11.15 and 11.16 of the Project Agreement, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in this Schedule 10).

**2. SCHEDULE FOR WORKS SUBMITTALS**

- 2.1 Project Co shall schedule the Review Procedure Activities, including the submission dates for all Works Submittals and the Contracting Authority Review Period in accordance with Section 5 of Schedule 12 – Works Schedule Requirements.
- 2.2 Project Co shall submit all Works Submittals to Contracting Authority in accordance with the Current Look-ahead Schedule, and the Contracting Authority Representative shall review and respond to each Works Submittal in accordance with the Contracting Authority review time periods specified on the Current Look-ahead Schedule or as otherwise agreed to between the Parties.
- 2.3 If, at any time, any or all of:
- (a) the Current Look-ahead Schedule is deemed null and void pursuant to Section 12.1 of Schedule 12 – Works Schedule Requirements;
  - (b) Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Baseline Works Schedule and the Current Look-ahead Schedule; or
  - (c) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Current Look-ahead Schedule, such that the Contracting Authority Representative cannot review the Works Submittal or Works Submittals within the time permitted in the Current Look-ahead Schedule;

then the Contracting Authority Representative shall, within 5 Business Days of receipt of such Works Submittal or Works Submittals, provide Project Co with an estimate of the time necessary for processing such Works Submittal or Works Submittals.

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**3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS**

- 3.1 Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue three printed copies of all Works Submittals to Contracting Authority, together with an electronic copy in the format set out in Appendix A to this Schedule 10 or as prescribed by Contracting Authority acting reasonably, including an electronic copy in native file format if requested by the Contracting Authority Representative and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon.
- 3.3 All Works Submittals shall be in English.
- 3.4 All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers or architects) shall, where applicable, be so signed and sealed.
- 3.5 All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Works that are the subject of the Works Submittal.
- 3.6 All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, any other applicable Schedule to this Project Agreement and any Design Data that has previously been subject to review.
- 3.7 All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Works Submittal;
  - (e) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
  - (f) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.8 If a Proposal Part corresponds to a Works Submittal, then Project Co shall ensure that its initial submission of such Works Submittal in accordance with this Schedule 10 is

substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not,

- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Works Submittal in accordance with this Schedule 10; or
- (b) constitute acceptance or comment by the Contracting Authority of any Proposal Part or any Works Submittal in accordance with Schedule 10.

#### 4. COMMENTS

4.1 The Contracting Authority Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The Contracting Authority Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 4 comments:

- (a) “NO COMMENT”;
- (b) “MINOR NON-CONFORMANCE”;
- (c) “MAJOR NON-CONFORMANCE”; or
- (d) “CRITICAL NON-CONFORMANCE”.

4.2 The comment “NO COMMENT” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, generally conforms to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittal.

4.3 The comment “MINOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Minor Non-Conformance but does not contain any Major Non-Conformance or Critical Non-Conformance. Project Co shall correct such Works Submittal and shall comply with and implement such Works Submittal after correction, including in accordance with the comments. If the Contracting Authority Representative assigns to a Works Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Representative no later than twenty (20) Business Days after the comment has been provided to Project Co, or such longer time period as determined by the Contracting Authority Representative, acting reasonably and as set out in writing. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Works Submittals and the Works as required to ensure that the Works comply with the Output Specifications and Project Co may be required, at the Contracting Authority Representative’s discretion, to resubmit the relevant Works Submittals. In such circumstances the Contracting Authority Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of



- time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4 The comment “MAJOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Major Non-Conformance but does not contain any Critical Non-Conformance. The comment “CRITICAL NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Critical Non-Conformance. Project Co shall correct and re-submit such Works Submittal within 10 Business Days after the comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” has been provided to Project Co, or such longer time period, as determined by the Contracting Authority Representative, acting reasonably and as set out in writing. The Contracting Authority Representative will then review such re-submitted Works Submittal and assign a comment to the corrected Works Submittal. The Works Submittal shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Works Submittal with a “CRITICAL NON-CONFORMANCE” comment will be a Proceeding At Risk Matter in accordance with Section 14.6(a)(ii) of the Project Agreement.
- 4.5 Where the Contracting Authority Representative issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the Contracting Authority Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.6 If, at any time after assigning any comment to a Works Submittal, the Contracting Authority Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the Contracting Authority Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Works. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the Contracting Authority Representative and the Project Co Representative may meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 Where a Works Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together

with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “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 “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## 5. DISPUTES

- 5.1 If Project Co disputes any comment assigned by the Contracting Authority Design Team to a Works Submittal under this Part A, Project Co shall promptly notify the Contracting Authority Representative, the CDB and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Design Team shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Contracting Authority Design Team 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 Design Team may direct that Project Co revise the Works Submittal in accordance with the comment of the Contracting Authority Design Team and proceed to perform and complete the Works on the basis of such revised Works Submittal. For clarity, Project Co may refer such direction for resolution as a Dispute in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement. For further clarity, notwithstanding any disagreement or Dispute between the Parties with respect to the direction provided by Contracting Authority with respect to the Work Submittal, Project Co shall comply with the direction given by Contracting Authority.
- 5.3 If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 of this Schedule 10, either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.4 Notwithstanding the provisions of Sections 5.2 and 5.3 of this Schedule 10, the Contracting Authority Representative may direct Project Co to 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, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 47 of the Project Agreement and 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 is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for 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 Project Agreement or exclude or limit Contracting Authority's rights in respect of the Works under this Project Agreement.

## 7. WORKS SUBMITTAL EXPLANATION

- 7.1 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable. Project Co shall provide the explanation to the Contracting Authority Representative within five (5) Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Representative.

## 8. REVISIONS

- 8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents and electronic versions of such documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 8.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.

- 8.4 Project Co shall keep all Design Data current, including a current set of the most recently issued submittal documents available on site in the construction site office for use by Contracting Authority and the Contracting Authority Representative. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

## **9. AUDIT OF WORKS SUBMITTAL IMPLEMENTATION**

- 9.1 Without limiting any other right under this Project Agreement, the Contracting Authority Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co (or resolved pursuant to Section 9.3 of this Schedule 10) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the 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 to Schedule 27 – Dispute Resolution Procedure for resolution.

## **10. VARIATIONS**

- 10.1 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2 If, having received comments from the Contracting Authority Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of 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 its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5 of this Schedule 10 including for clarity, the exercise by Contracting Authority of its rights under Section 5.4 of this Schedule 10. 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 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.

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**APPENDIX A****MINIMUM DESIGN AND CONSTRUCTION SUBMITTAL AND CERTIFICATION REQUIREMENTS****1. DOCUMENT CONTROL AND SECURITY PROTOCOL****1.1 Submission of Document Control and Security Protocol**

- (a) Project Co shall prepare and submit the Document Control and Security Protocol in accordance with the requirements set forth in the Project Agreement. The Document Control and Security Protocol shall be provided in the following format:
- (i) 8.5” x 11.5” black and white with
  - (ii) 11” x 17” foldouts in full colour.

**2. DESIGN MANAGEMENT PLAN AND TECHNICAL APPRAISAL FORMS****2.1 Submission of Design Management Plan**

- (a) Within 90 days following Financial Close, Project Co shall submit a Design Management Plan to the Contracting Authority Representative in accordance with the Review Procedure. The Design Management Plan shall include:
- (i) the organization chart, including the Design Manager, Lead Design Engineer, coordinating engineer, for all design activities;
  - (ii) the procedures to be used for designing and checking each of the designs;
  - (iii) the procedures to be used to undertake all the required design work as identified in Schedule 15-2 and Schedule 17 – Environmental Obligations;
  - (iv) the procedures to be used to coordinate and integrate with the environmental project team, including the Environmental Director and Environmental Manager(s);
  - (v) the form of design review to be undertaken by Project Co;
  - (vi) the identification of the Checking Team;
  - (vii) the contents and format of Pre-final Design Development Submittals and Final Design Development Submittals, as well as the Construction Document Submittals;
  - (viii) a design review and audit schedule, in both table and Gantt chart format, indicating dates that Project Co plans to:
    - (A) conduct internal audits of the design verification process;

- (B) submit Design Development Submittals and Construction Document Submittals as detailed in this Appendix A of Schedule 10 – Review Procedure, Schedule 15-2 and Schedule 17 – Environmental Obligations;
  - (C) undertake an initial meeting to discuss how Project Co will coordinate the Design, re-submissions, revisions and mark-ups; and
  - (D) undertake review meetings in accordance with Section 11.1 of the Project Agreement;
- (ix) the process and schedule for Road Safety Audits;
  - (x) the detailed process and schedule to undertake consultation on the design, to address the comments received from Stakeholders and Governmental Authority(s), and to obtain Project Co Permits, Licenses, Approvals and Agreements and, if required, amendments to the Environmental Approvals for the Project, prior to submissions of design through the Review Procedure;
  - (xi) the procedures for undertaking the Explicit Safety Analysis as required in Schedule 15-2 Part 2 Section 1.8;
  - (xii) a work breakdown structure for design indicating the Design Team and associated designers;
  - (xiii) a drawing tree indicating the organization and hierarchy of Project Co's drawings;
  - (xiv) appropriate metrics to measure the progress of the design for each discipline;
  - (xv) the process for certifying construction including the identification and organization of the personnel responsible for verifying construction compliance with the Design Data and the provisions of the Project Agreement to enable the Design Team principal to sign and seal the Construction Certificates;
  - (xvi) the process for addressing, as between Project Co and the Construction Contractor, on-site requests or requests for information and the process by which Project Co will ensure that Contracting Authority is promptly informed of any proposed changes resulting from the aforesaid requests for information and the process by which such changes will be submitted through the Review Procedure;
  - (xvii) the process for informing Contracting Authority of Design changes and submission of such changes pursuant to the Review Procedure; and

- (xviii) the Review Procedure Activities Register (as also referenced in Schedule 12), including plans for weekly or bi-weekly updates of this register and common platform where such register is shared with Contracting Authority.
- (b) Project Co shall update the Design Management Plan if any amendments are made.
- (c) Any subsequent amendments or updates to the Design Management Plan shall be submitted by Project Co to the Contracting Authority Representative in accordance with the Review Procedure.

## 2.2 Compliance with Design Management Plan

- (a) Project Co shall implement and comply with the initial Design Management Plan which has been reviewed by the Contracting Authority Representative in accordance with the Review Procedure, and any subsequent amendments or updates to the initial Design Management Plan made following a review by the Contracting Authority Representative in accordance with the Review Procedure, in connection with all Design Data prepared or adopted in connection with the Output Specifications, Schedule 17 – Environmental Obligations, and any other design or Construction Activities in the Project Agreement.

## 2.3 TAF Submission Requirements

- (a) Each Final Design Development Submittal and Construction Document Submittal package submitted by Project Co shall be accompanied by a completed Technical Appraisal Form (TAF) for each discipline.
- (b) In any case where submitted Design Data involves any mechanical or electrical and/or intelligent transportation system functions, or similar specialization, Project Co shall submit to the Contracting Authority Representative in accordance with the Review Procedure a TAF in respect of such data and functions in consultation with the Contracting Authority Representative.
- (c) In any case where the Works involves the complete or partial demolition of an existing Structure, Project Co shall submit to the Contracting Authority Representative in accordance with the Review Procedure a TAF in respect of such complete or partial demolition, a Rehabilitation TAF.

## 2.4 TAF Form and Content

- (a) Each TAF submitted by Project Co pursuant to Section 2.3 of this Appendix A shall be in the format shown in Attachment 1 to this Schedule 10 (Sample Contents for a Structural TAF) and shall:
- (i) for each Final Design Development Submittals, include the relevant design criteria, environmental and ground considerations, and interface

requirements, together with a listing of the design documentation included in the design package; and

- (ii) be signed by:
  - (A) the Project Co Representative; and
  - (B) the Design Manager or Appropriate Person (defined below) as necessary.

## 2.5 TAF Variation

- (a) Any variation to a TAF which has been subject to the Review Procedure during design, assessment or any Construction Activity shall be submitted in accordance with the Review Procedure as an addendum to the TAF.

## 2.6 Record Drawings

- (a) Project Co shall track and document all changes from the Issued for Construction Drawings up to and including the preparation and submission of the final Record Drawings in accordance with Schedule 15-2 Part 1.

# 3. DESIGN AND CONSTRUCTION SUBMISSIONS, REVIEW AND REPORTS

## 3.1 Design and Construction Certification

- (a) The following terms shall have the following meanings:
  - (i) **“Construction Certificate (Interim)”** means the form of certificate to be issued by Project Co pursuant to section 3.1(d) of this Appendix A of this Schedule 10;
  - (ii) **“Construction Certificate (Completion)”** means the form of certificate to be issued by Project Co pursuant to section 3.1(d) of this Appendix A of this Schedule 10;
  - (iii) **“Construction Certificates”** means the Construction Certificate (Interim) and the Construction Certificate (Completion) and “Construction Certificate” means any one of them.
  - (iv) **“Design Certificate (Environmental)”** means the form of certificate entitled “Design Certificate (Environmental)” to be issued by Project Co pursuant to section 3.1(c) of this Appendix A of this Schedule 10;
  - (v) **“Design Certificate (General)”** means the form of certificate entitled “Design Certificate (General)” to be issued by Project Co pursuant to section 3.1(c) of this Appendix A of this Schedule 10;



- (vi) “**Design Certificates**” means the Design Certificate (General) and the Design Certificate (Environmental) and “Design Certificate” means any one of them.
- (b) Design and Construction Certification Procedure
- (i) Project Co shall implement and ensure compliance with the procedure set out in this Section 2.1 (the “**Design and Construction Certification Procedure**”), throughout the Project Term.
- (ii) The Design and Construction Certification Procedure shall apply to all Design Data prepared or adopted in connection with the Works, Reinstatement Works, and any other Construction Activities taking place, including any further design development or changes to a design once a TAF has been subjected to the Review Procedure.
- (iii) Project Co shall ensure that all certification procedures referred to in the Design and Construction Certification Procedure are complied with by the appropriate persons referred to therein, including the Design Team, and any independent team or engineer within the Design Team, as the case may be (together, the “**Appropriate Persons**”), and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfill the obligations required of them under the Design and Certification Procedure shall be a breach of the Project Co’s obligations under the Project Agreement.
- (iv) Project Co shall submit all Design Certificates and Construction Certificates, together with the supporting documentation (including such supporting documentation as Contracting Authority may reasonably request), to the Contracting Authority Representative for review, acting reasonably, in accordance with the Review Procedure. The submitted Design Certificates and Construction Certificates shall have original signatures, seals, registration numbers and all such other information as is required by the form provided in Attachment 2 and 3 to this Schedule 10, provided that Project Co shall not deviate from or otherwise modify such form or its requirements.
- (c) Design Certificates
- (i) Project Co shall prepare and issue a separate Design Certificate (in the form as provided in Attachment 2 to this Schedule 10) for each submitted Construction Document Submittal review package and each Reinstatement Plan to the Contracting Authority Representative for review in accordance with the Review Procedure. All Design Certificates prepared and issued by Project Co shall be:

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- (A) either the Design Certificate (General) or Design Certificate (Environmental), as applicable;
  - (B) signed and sealed by a principal of the Design Team or a designer of Project Co, as applicable, and the responsible professional, who shall be a Professional Engineer or a registered architect;
  - (C) signed by the Project Co Representative; and
  - (D) in the case only of Design Certificates (Environmental), signed by the Environmental Director.
- (ii) Any person who signs a Design Certificate shall clearly print his or her name and the position held in his or her organization on the Design Certificate.
- (d) Construction Certificates
- (i) Project Co shall prepare and issue Construction Certificates (in the form as provided in Attachment 3) to the Contracting Authority Representative for review in accordance with the Review Procedure:
- (A) in the case of Construction Certificate (Interim), within 15 Business Days following the end of each calendar month (for that calendar month), from Financial Close until the date of delivery of the Substantial Completion Notice;
  - (B) in the case of Construction Certificate (Completion):
    - (I) at least 10 Business Days prior to the delivery of the Substantial Completion Notice for Substantial Completion, unless otherwise agreed to by the Contracting Authority in its sole discretion and in writing;
    - (II) at least 10 Business Days prior to the delivery of Final Completion Notice for Final Completion;
    - (III) every 365 days from the date of Substantial Completion to the end of the Project Term;
    - (IV) at least 10 Business Days prior to the final completion of any Reinstatement Work; and
    - (V) at least 10 Business Days prior to the Expiry Date.
- (ii) All Construction Certificates prepared and issued by Project Co shall be:

- (A) signed by the Construction Contractor representative or by Project Co;
  - (B) signed and sealed by the responsible professional who shall be a Professional Engineer or a registered Architect, and a principal of the Design Team;
  - (C) signed by the Project Co Representative; and
  - (D) for each Construction Certificate (Completion) issued between Financial Close to Final Completion, signed by the Independent Certifier acknowledging receipt.
- (iii) Any person who signs a Construction Certificate shall clearly print his or her name and the position held in his or her organization on the Construction Certificate.

### 3.2 Format of Design and Construction Submissions

- (a) Project Co shall provide three hard copies and one electronic copy of each Pre-final Design Development Submittal, Final Design Development Submittal and Construction Document Submittal. The hard copies of the drawings shall be couriered to MTO's London Office, IO's Toronto Office and the location that agreed by Contracting Authority Representative. Electronic copy shall be in the native file format, such as AutoCAD, if requested by the Contracting Authority Representative.
- (b) Drawings shall be in a format in accordance with the requirements of MTO standards. Project Co shall confirm drawing conventions and standards, including AutoCAD and InRoads standards, title block and stationing convention, with the Contracting Authority Representative prior to commencing design drawing production. The design cross-sections shall be completed using the InRoads V8i SS2 Ver 2 software. InRoads customization includes the symbols and styles for all features in survey and design, superelevation tables, horizontal and vertical design curve checks as per MTO Geometric Design Manual, preference file (.xin), standard drawing with all layers and blocks as per MTO IESCAD standards. InRoads DTM data is to be generated by converting a Ministry compliant DTM.
- (c) Ten Business Days prior to Substantial Completion, Project Co shall prepare and submit to Contracting Authority one complete set of drawings and documents, including a narrative detailing any changes from previous submissions. The information is also to be provided in digital format with drawings in AutoCAD ".DWG" format (MTO approved version) and other documents in Adobe (PDF) format.
- (d) All new alignments shall be provided in XML text file format (ver 1.2) and shall conform to the Ministry of Transportation standards and naming conventions.

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- (e) Wherever this document makes reference to AutoCAD, it shall be MTO's current AutoCAD Version. Earlier or later releases will not be accepted unless approved by MTO.
- (f) Notwithstanding section (b) above, Project Co may use Open Roads Designer (ORD) program to undertake the roadway and drainage design and shall conform with the following requirements:
- (i) Project Co shall discuss the submission the Workspace files and the data file requirements with Contracting Authority before the design begins.
  - (ii) Project Co shall include all files and data used in the preparation of the cross-section drawings, quantities, and reports in each submittal stages. Project data should be identical to the contents presented in the contract book which may include the following, but not limited to:
    - (A) Surface file (.tin, .dtm);
    - (B) two-dimension & three-dimension individual design models (terrain, geometry, superelevation, corridors, drainage, bridge, etc.) (.dgn);
    - (C) Master model (contain all terrain, geometry, corridors, superelevation, etc. for plan sheets, cross section, quantities, reports); (.dgn);
    - (D) Exported data from design models (.xml, .imodel, .ifc, .dwg);
    - (E) ORD project Template file (.itl);
    - (F) Superelevation rule file (.xml);
    - (G) Reports (.xml, .xlsx, .docx, .pdf, .txt);
    - (H) Project drawing sheets (.dwg, .dgn, .pdf);
    - (I) Supporting, import/export, data exchange files (various format)
  - (iii) A project content/summary file should also be submitted along with the ORD project data set. This file contains specific project information, software used in design process and their version, special settings and customizations, and descriptions of the files and data contained in the submitted project data set.
- (g) All submissions shall adhere to a file naming convention as specified by Contracting Authority.

### 3.3 Design and Construction Submission Review

The Design Development Submittals and Construction Document Submittals shall be submitted to the Contracting Authority Representative in accordance with the Review Procedure. Final Design Development Submittals, and Construction Document Submittals shall consist of the relevant TAF(s) together with all final design drawings, supporting Design Data and calculations required in accordance with the design requirements outlined in the Project Agreement, in

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particular and including Schedules 15 – Output Specifications and 17 – Environmental Obligations, and this Appendix A.

### **3.4 Objection to Design Data**

If the Contracting Authority Representative objects to any Design Data in accordance with the Review Procedure, the Contracting Authority Representative shall so notify Project Co and Project Co shall, unless Project Co disputes the objection by the Contracting Authority Representative to such Design Data in accordance with the Dispute Resolution Procedure, either:

- (a) cause to be made such alterations and additions as may be necessary such that the Design Data accords with the project requirements, Good Industry Practice, and all other requirements of this Project Agreement, all in accordance with the Review Procedure; or
- (b) subject to the other provisions of this Project Agreement, submit an Innovation Proposal.

### **3.5 Issued for Construction Drawings**

- (a) Construction Document Submittals submitted in accordance with this Schedule 10 and assigned comments “NO COMMENT” or “MINOR NON-CONFORMANCE” with no requirement to resubmit and with all of the comments addressed, shall become Issued For Construction and shall be stamped “Issued For Construction”. Works Submittals used for the construction of any part or parts of the Expansion Infrastructure prior to being entitled to proceed, as noted above, shall not be stamped as Issued For Construction.
- (b) Project Co shall submit copies of all drawings that are Issued For Construction, together with manuals, instructions to the Construction Contractor along with any other relevant information as requested by the Contracting Authority Representative, to the Contracting Authority Representative and to the Independent Certifier.
- (c) Revisions to Issued For Construction documents shall be resubmitted as Construction Document Submittals to Contracting Authority when such revisions are a result of discrepancies or anticipated discrepancies between proposed construction Works and Issued For Construction drawings. The revised submission shall include documentation identified in 3.6 of this Appendix A of Schedule 10.
- (d) Issued For Construction documents are required for the certification of construction detailed in Appendix A of this Schedule 10.

### **3.6 Changes to Works Submittals During Construction**

- (a) Should changes to the latest reviewed Works Submittals be required during construction, the following process shall be met:

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- (i) Project Co shall immediately notify in writing to Contracting Authority and IQAF that changes are required where the proposed construction Works do not conform to the latest reviewed Works Submittals. The notification shall include the following:
- (A) Description of the issue and changes;
  - (B) Justification on why the original design in the Works Submittals drawings cannot be constructed;
  - (C) A plan and schedule for developing a revised design to resolve the issue;
  - (D) Confirmation that Project Co's Design Team and IQAF have been contacted and are reviewing the issue and has agreed to the changes; and
  - (E) Relevant photos.
- (ii) Project Co shall submit the changes to the revised drawings and Design Data under the Review Procedure as required in accordance with Section 3.2 of Part 2 of Project Agreement Schedule 15-2. In Contracting Authority's sole discretion, Contracting Authority may request the following information:
- (A) additional relevant Design Data, including technical report signed and sealed by Project Co's Professional Engineer(s) and backup documentation including the following:
    - (I) Description of the issue;
    - (II) Rationale for the design change;
    - (III) Details on the proposed revised design to resolve the issue. This shall include the following:
      - i) The designer's logic and decision making process to arrive at the proposed revised design. The proposed revised design shall be in accordance to requirements detailed within this Project Agreement, and also be defensible and based on sound engineering principles.
      - ii) Impact to the Class EA Process.
      - iii) Reference to design standards, MTO guidelines and standards used

- iv) Relevant plans, profiles, cross-sections, quantity sheets, flow charts, etc.
  - (IV) Reason that this was not captured in the original design and measures implemented to prevent future occurrences;
  - (V) Schedule for implementation
  - (VI) Describe impacts to other components of the Project, associated project activities and to overall construction schedule and document the changes in accordance with Schedule 12 – Works Schedule Requirements.
- (B) Project Co shall provide such documentation within 5 (five) Business Days of request unless the Contracting Authority otherwise agrees to a longer period.
- (iii) Upon completion sections (i) and (ii) above, Project Co shall implement (construct) the proposed changes in accordance with the revised Works Submittals. Project Co shall only proceed with implementing the revised changes upon completing sections (i) and (ii) above.
  - (iv) At the discretion of Contracting Authority and the IQAF, a face-to-face meeting may be held to have Project Co explain the items described above. At this meeting, the Design Team’s Professional Engineer, the Design Manager, Construction Manager and the Design-Build Director shall be present (in person).
  - (v) Project Co shall be responsible for all aspects of the change, including all associated design, consultation, construction costs and schedule impacts. Unless agreed by Contracting Authority, the Engineers on the Design Team (s) signing and stamping the proposed revised design shall be the same who signed and stamped the original design.
- (b) In addition to Section 3.2 of this Schedule 10, Project Co shall prepare a live register to document the changes. The register shall include the details listed in Section 3.6 (a) (i), (ii), and (iii) of this Appendix A as well as confirmation by the IQAF that the change was implemented.

### 3.7 Temporary Works

- (a) As a minimum, design submissions for Temporary Works shall include those items intended for public use and/or potentially affecting public safety. Final designs for these Temporary Works shall be submitted to the Contracting Authority Representative in accordance with the Review Procedure.
- (b) Design Data relating to any Temporary Works shall be checked as follows:

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- (i) any such Design Data prepared by or on behalf of the Construction Contractor requires an independent check by the Design Team; and
  - (ii) any such Design Data prepared by the designer requires an independent check by a Checking Team which may be from the designer but shall be independent of the Design Team.
- (c) In performing the check referred to in paragraph (b) above, the designer shall satisfy itself that:
- (i) the Design Data meets the project requirements and otherwise complies with the requirements of the Project Agreement;
  - (ii) the Temporary Works (as a whole and the constituent parts) are satisfactory for the safe and proper discharge of Project Co's relevant obligations; and
  - (iii) the Design Data reflects the requirements of the relevant Governmental Authority for all affected highways, roads, culverts, intersections, infrastructure or areas used by or accessible to the public other than the New Expansion Infrastructure.
- (d) Where any Temporary Works may endanger public safety on other road or area used by or accessible to the public other than the New Expansion Infrastructure, Project Co shall consult the relevant Governmental Authority and the Design Data shall reflect the requirements of such Governmental Authority.
- (e) Road Safety Audit Certificate shall be submitted as part of the Submittals in respect of Temporary Works in accordance with Article 10 (Road Safety Audit) of Part 2 of the Design and Construction Specifications.
- (f) Project Co shall submit traffic staging drawings with the supporting traffic analysis in accordance with Article 1.4 (Traffic Engineering) of Part 2, Schedule 15-2 and Part 3, Schedule 15-2.

#### **4. NOT USED**

#### **5. PRE-FINAL DESIGN DEVELOPMENT SUBMITTALS**

##### **5.1 General**

- (a) In accordance with the Design Management Plan and requirements of the Design and Construction Certification Procedure, Project Co and the Contracting Authority Representative shall agree on the 50% design information to be submitted for review in the Pre-final Design Development Submittals, the schedule of such submissions and the scope of the review.
- (b) The content of such interim design submissions shall be appropriate to the subject and discipline. The information provided shall be adequate to show that an



integrated design is proceeding in compliance with the Project Agreement for all disciplines and is taking into consideration Project Co's obligations under the Project Agreement, including the relevant Project Co Permits, Licenses, Approvals and Agreements, Environmental Approvals and Construction Activities.

- (c) Pre-final Design Development Submittals shall be prepared and shall have indices and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design development calculations and backup information. Design submissions shall include, without limitation, copies of all approvals (including for example Environmental Approvals), design reports, plans or management plans, models, correspondence and calculations, all of which are identified in Section 6 of this Appendix A and developed to a state that supports the relevant Pre-final Design Development Submittal. The design document shall be submitted in both PDF and native file type and formats that are compatible with those used by Contracting Authority.
- (d) As part of Pre-final Design Development Submittals, the following shall be submitted:
- (i) The Road Safety Audit Certificate in accordance with Article 10 (Road Safety Audit) of Part 2 of Schedule 15-2 of this Project Agreement;
  - (ii) Design calculations and analyses, including sight distance (stopping, intersection and decision), signage sight distance, design vehicle turning (Swept Path), guiderail length of needs, Explicit Safety Analysis, electrical lighting level calculations;
  - (iii) Traffic analysis as required in Schedule 15-2 Part 2 Section 1.4 and Section 15-2, Part 3 for the temporary staging (Traffic Analysis Report – During Construction) and the final conditions (Traffic Analysis Report – Proposed Design). The traffic analysis shall be submitted before or at the same time as the roadway or highway design submission;
  - (iv) Preliminary foundation recommendations for the design of foundations for structures, before or at the same time as the structural submission; and
  - (v) Stormwater management plan and drainage hydrology, hydraulics, and stormwater management report.
  - (vi) Preliminary pavement design recommendations for the design of pavements, before or at the same time as the roadway or highway design submission.
  - (vii) Draft design criteria report as per MTO Design Criteria Guideline, being the guidelines issued by MTO's Design and Contract Standards Office Highway Standards Branch.

## 6. FINAL DESIGN DEVELOPMENT SUBMITTALS

### 6.1 General

- (a) Final Design Development Submittals shall be prepared and shall have indexes and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design calculations and backup information. Design submissions shall include, without limitation, copies of all approvals, design reports, correspondence and calculations. The design document shall be submitted in both PDF and native file type and formats that are compatible with those used by Contracting Authority.
- (b) Final design drawings and reports shall be developed to a stage that is ready to be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of an appropriate discipline.
- (c) The Road Safety Audit Certificate shall be submitted as part of Final Design Development Submittals in accordance with Article 10 (Road Safety Audit) of Part 2 of Schedule 15-2 of this Project Agreement.
- (d) Project Co shall document changes and describe the design work that has been developed since the Pre-final Design Development Submittals, and shall provide these documented changes in a format acceptable to Contracting Authority. The changes since the Pre-final Design Development Submittals shall clearly address the resolution of all comments provided by Contracting Authority, and Governmental Authorities from the Pre-final Design Development Submittals.
- (e) Project Co shall not proceed to submit a Final Design Development Submittal if it has not received a “NO COMMENT” or “MINOR NON-CONFORMANCE” (with no requirement to resubmit) as a review comment from the Pre-Final Design Development Submittal.

### 6.2 Roadway Design

The Final Design Development Submittals shall, without limitation:

- (a) contain all drawings, including complete laning and geometrics, profiles, typical and template cross-sections, side slopes annotation and drainage features;
- (b) contain design calculations and analyses, including sight distance (stopping, intersection and decision), signage sight distance, design vehicle turning (Swept Path), guiderail length of needs and, updated Explicit Safety Analysis;
- (c) address any comments of the Contracting Authority Representative from the Design Review Meetings, internal design reviews, quality control, and design reports;

- (d) include revisions, stakeholder issues, plans for utility relocations, critical constructability and traffic handling considerations, fencing, environmental issues and mitigation plans; and
- (e) document the completed ‘Design Exception Process’ (if applicable) as documented in Section 1.2 of Part 2 of Schedule 15-2 of this Project Agreement.

### 6.3 Drainage Design

The Final Design Development Submittals shall, without limitation:

- (a) contain all the design parameters and requirements in accordance with Article 7 (Drainage and Erosion Control Design Criteria) of Part 2 of Schedule 15-2, Design and Construction Specifications (with all deliverables being required to comply with Section 7.8 of Part 2 of Schedule 15-2);
- (b) contain all drainage drawings;
- (c) include detail drawings of water course realignments, stormwater management facilities, and erosion and sediment control plans;
- (d) include a stormwater management plan and drainage hydrology, hydraulics, and stormwater management report, including digital modelling files;
- (e) include the gravity pipe design recommendations;
- (f) address any comments of the Contracting Authority Representative from the Design Review Meetings, internal design reviews, quality control, and design reports; and
- (g) include revisions, stakeholder issues, environmental issues and mitigation plans.

### 6.4 Structures, Culvert, Submerged Culverts, and Overhead Sign Support Structure

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) all design drawings;
- (b) final Foundation Investigation and Design Report for each Structure;
- (c) one consolidated final drainage and hydrology report containing each structure crossing a watercourse or located in a flood plain;
- (d) environmental mitigation/compensation plans;
- (e) resolution of all issues identified during Pre-final Design Development Submittal reviews;

- (f) any special provisions for the construction of the Structures and rehabilitation strategy and methods;
- (g) a neat, bound, indexed set of design calculations for the Structures initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline;
- (h) for proprietary precast Culverts the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline shall sign and seal the drawings, and such design shall also include certification by a member of the Design Team that the design and construction of the precast Culverts meet the Output Specifications; and

### 6.5 Retaining Wall and Noise Wall Design

- (a) The Final Design Development Submittals shall contain, without limitation, the following:
  - (i) final Foundations Investigation and Design Report for the retaining walls;
  - (ii) descriptions of aesthetic treatment for all walls;
  - (iii) descriptions of maintenance considerations for walls;
  - (iv) resolution of all issues identified during Pre-final Design Development Submittals reviews;
  - (v) all final design drawings; and
  - (vi) a neat, bound, indexed set of design calculations for the walls initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline.
- (b) For proprietary retaining walls, the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, shall sign and seal the drawings and such design shall also include certification by a member of the Design Team that the design and construction of the retaining walls meet the Output Specifications.

### 6.6 Foundation Design

- (a) For the Final Design Development Submittals Project Co shall submit a Foundation Investigation and Design Report conforming to the requirements of Article 5 - Foundations and Geotechnical Systems Design Criteria of Part 2 of Schedule 15-2 of the Project Agreement (the “**Foundation Investigation and Design Report**”).

- (b) The Foundation Investigation and Design Report shall be submitted to the Contracting Authority Representative at the pre-final design completion level and updated and resubmitted with the final design.

### 6.7 Pavement Design Report

- (a) The Final Design Development Submittals shall include a Pavement Design Report conforming to the requirements of Article 3 – Pavement Design Criteria of Part 2 of Schedule 15-2 of this Project Agreement (the “**Pavement Design Report**”).
- (b) The Pavement Design Report shall be submitted to the Contracting Authority Representative at the pre-final design completion level and updated and resubmitted with the final design.

### 6.8 Electrical, Signing and Pavement Markings Design

- (a) The Final Design Development Submittals shall include electrical (including signals, lighting and telecommunications), signing and both Temporary and Permanent Pavement Marking Plans (as defined in Schedule 15-1 – Output Specifications – Definitions and Reference Documents) of this Project Agreement.
- (b) Design drawings for all electrical systems shall contain, without limitation, the following:
  - (i) electrical equipment and all associated support structure locations;
  - (ii) lighting calculations where appropriate;
  - (iii) service locations;
  - (iv) layout drawings showing electrical lighting poles, ducts, chambers, power distribution and/or supply cabinets; and
  - (v) wiring diagrams showing low voltage power distribution as well as high voltage wiring where applicable.
- (c) Design drawings for the telecommunications conduit network, if applicable, shall contain, without limitation, the following:
  - (i) network diagram showing conduit locations; and
  - (ii) design drawings showing the locations for all interconnection points.
- (d) The Final Design Development Submittals shall include resolution of all issues identified during Design Review Meetings or Pre-final Design Development Submittals.
- (e) Extruded ground mounted Signs structure details and calculations.

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- (f) Sign design sheets shall be submitted for all custom guide signs.
  - (g) All cantilever and sign bridge Structures submissions, if applicable, shall be undertaken in accordance with the MTO Sign Support Manual.
  - (h) PHM-125 signal drawings shall be submitted for all temporary and permanent signals and shall contain, without limitation, the following:
    - (i) All regulatory signs that assist in the signal operations (to be included on drawing and in a legend);
    - (ii) Signal hardware excluding underground provisions and electrical wiring;
    - (iii) Vehicle detection and nearby accesses and any emergency pre-emption;
    - (iv) Pavement markings including lanes, crosswalks, stop bars and through/turning arrows;
    - (v) Active transportation accommodations;
    - (vi) MTO PHM-125 standard template;
    - (vii) Signed and Sealed by Professional Engineer;
    - (viii) Hard copies in 1:500 scale; and
    - (ix) Electronic copies in AutoCAD format.

## 6.9 Landscaping and Site Restoration

The Final Design Development Submittals shall contain detailed landscaping and ecological restoration drawings (including timing of such works in compliance with Project Agreement requirements) that reflect any highway design changes and incorporate comments made on the interim submissions. Project Co shall document changes and describe the design work that has been completed since the Pre-final Design Development Submittals, and document public consultation conducted as part of the development of the landscaping and ecological restoration drawings. Drawings shall be of a suitable scale for legibility, and provide enlarged detailing where needed.

## 6.10 Traffic Engineering

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) Drawings supporting the Traffic Management Plans in accordance with Article 5 of Part 3 Schedule 15-2 of the Project Agreement;
- (b) traffic analysis report (During Construction and Proposed Design), which shall include comprehensive traffic analysis along with all supporting documentation

and calculations in accordance with Schedule 15-2 – Output Specifications, Part 2 (Design and Construction Requirements), Article 1, Section 1.4 (Traffic Engineering Requirements); and

- (c) signal timing sheets and phasing diagrams associated with the design of signalized intersections.

### 6.11 Environmental Design

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) applicable construction drawings that include:
  - (i) landscaping and ecological restoration areas including mitigation, compensation and overall benefit measures within the Lands as per the necessary permits or approvals to be obtained under the SAR or ESA; all environmentally sensitive areas, and all restoration areas;
  - (ii) all fisheries offsetting measures developed to secure Fisheries Act Authorizations from Fisheries and Oceans Canada (DFO);
  - (iii) all drainage and stormwater management pond areas; and
  - (iv) erosion and sediment control measures;
- (b) riparian restoration and reclamation/revegetation drawings that, as a minimum, describe timing requirements, seed mixes and applications rates of hydroseeding and site specific restoration plans, including species type, size and spacing for riparian areas, areas of higher sensitivity, and areas prone to erosion or shallow slope movement;
- (c) environmental design drawings that show environmental protection, mitigation and compensation measures to be temporarily or permanently constructed;
- (d) environmental design documentation including:
  - (i) regulatory agency review and acceptance documentation for the Environmental Management System specific to the Works;
  - (ii) all licenses, notifications, permits, authorisations and approvals specific to the work designed; and
  - (iii) all assessments, studies, surveys, reports, and plans specific to the work designed;
- (e) an environmental design criteria checklist that lists general environmental commitments and assurances, environmental design commitments, site specific

environmental features and environmental mitigation/compensation plans including all commitments, assurances and plans relating to heritage features;

- (f) Resolution of all issues identified during Design Review Meetings and Pre-final Design Development Submittal reviews; and
- (g) Contract drawings as required and in conformity to environmental assessment documentation such as design and construction reports.

## **7. CONSTRUCTION DOCUMENT SUBMITTALS**

### **7.1 General**

- (a) Construction Document Submittals shall be prepared and shall have indices and sectional dividers. The folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. Submissions shall include, without limitation, copies of all final approvals, design reports, correspondence and calculations.
- (b) Construction Document Submittals for all drawings, reports, and other applicable design data shall be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, or as applicable an architect licensed to practice in Ontario. These disciplines shall include, as a minimum, all that are identified in the Final Design Development Submittals.
- (c) Project Co shall not proceed to submit a Construction Document Submittal if it has not received a “NO COMMENT” or “MINOR NON-CONFORMANCE” (with no requirement to resubmit) as a review comment from the Final Design Development Submittal.



**ATTACHMENT 1**

Sample Contents for a Structural Technical Appraisal Form (TAF).

Note: TAF for other disciplines may follow a similar format.

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**SAMPLE CONTENTS FOR A STRUCTURAL CULVERT TAF**

Ref. No:

**1. PROJECT DESCRIPTION**

- 1.1 Name and location of structure
- 1.2 Permitted traffic speed (for a Bridge give over and/or under)

**2. PROPOSED STRUCTURE**

- 2.1 Description of Structure
- 2.2 Structural type *(Include reasons for choice)*
- 2.3 Foundation type *(Include reasons for choice)*
- 2.4 Span arrangements *(Include reasons for choice)*
- 2.5 Barrier type *(Include reasons for choice)*
- 2.6 Proposed arrangements for inspection and maintenance
- 2.7 Materials and finishes *(Include reasons for choice)*

**3. DESIGN/ASSESSMENT CRITERIA**

- 3.1 Live Loading, Clearances
  - 3.1.1 Bridge code loading
  - 3.1.2 Design vehicle
  - 3.1.3 Other live loading
  - 3.1.4 Provision for exceptional abnormal loads:
    - 3.1.4.1 Gross weight
    - 3.1.4.2 Axle load and spacing
    - 3.1.4.3 Location of vehicle track on deck cross-section
  - 3.1.5 Any special loading not covered above
  - 3.1.6 Minimum clearances provided (vertical and horizontal)
  - 3.1.7 Authorities consulted and any special conditions required

3.2 List of relevant design documents

#### 4. STRUCTURAL ANALYSIS

4.1 Methods of analysis proposed.

4.2 Description and diagram of structure modeling to be used for analysis.

4.3 Details, version and date, for any commercial computer software packages to be used for the analysis.

4.4 A hard copy of the input data to be included with the design notes. Material strengths to be used in the analysis for new construction, and assumptions made for structural element material properties, strengths and stiffness, etc., for existing structures.

4.5 Proposed earth pressure coefficients ( $k_a$ ,  $k_o$ , or  $k_p$ ) to be used in design of earth retaining elements.

#### 5. GROUND CONDITIONS

5.1 Acceptance of interpretative recommendations of the soils report to be used in the design and reasons for any proposed departures.

5.2 Describe foundations fully including the reasons for adoption of allowable and proposed bearing pressures/pile loads, strata in which foundations are located, provision for skin friction effects on piles and for lateral pressures due to compression of underlying strata, etc.

5.3 Differential settlement to be allowed for in design of structure.

5.4 Anticipated ground movements or settlement due to embankment loading, flowing water, and measures proposed to deal with these defects as far as they affect the structure.

5.5 Results of tests of ground water (e.g. pH value, chloride or sulphate content) and any counteracting measures proposed (as applicable).

5.6 Anticipated ground movements or settlement due to seismic loading, measures proposed to deal with these impacts as far as they affect the structure.

#### 6. CHECKING

6.1 Names of proposed Checking Team

**7. DRAWINGS AND DOCUMENTS**

7.1 List of drawings (including numbers), documents or reports accompanying the submission. To include (without limitation):

7.1.1 a location plan;

7.1.2 a preliminary general arrangement drawing; and

7.1.3 relevant parts of the Foundation Investigation portion of the Foundation Investigation and Design Report.

**8. THE ABOVE DESIGN AND CONSTRUCTION PROPOSALS ARE SUBMITTED FOR REVIEW.**

Signed: \_\_\_\_\_

[Design Manager][Design Manager for Project Co] **[NTD: Inapplicable language to be deleted.]**

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

Engineering Qualifications: \_\_\_\_\_

Date: \_\_\_\_\_

Professional Registration Number: \_\_\_\_\_

Affix Professional Seal

Signed: \_\_\_\_\_

Project Co Representative

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

Date: \_\_\_\_\_

Professional Registration Number: \_\_\_\_\_

Affix Professional Seal

**ATTACHMENT 2**

**Form of Design Certificate**

**DESIGN CERTIFICATE (GENERAL)**

In respect of :..... (Provide submittal details e.g. Roadway, Structures, Drainage, Foundation, etc.)

*Project Agreement between Contracting Authority and Project Co dated May 18, 2023 (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.*

*This form of certificate is to be used by the Design Team and Project Co for certifying the design of the Works in accordance with Schedule 15-2 – Output Specifications - Design and Construction and other design-related requirements in the Project Agreement.*

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Design and Construction 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 Management Plan] [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 **[NTD: Inapplicable language to be deleted.]**:

i. complies with all applicable [Design and Construction Specifications], including Technical Appraisal Form No. [.....] dated [.....] as amended by the following **[NTD: Inapplicable language to be deleted.]**:

**[List, if any, the changes made by the issue of Variation(s) and any addenda to the foregoing Technical Appraisal Form];**

ii. complies with all applicable design requirements of the Project Agreement;

iii. complies with Applicable Law and Good Industry Practice; and

iv. accurately describes and depicts the Works to be undertaken.

**SCHEDULE**

**[Include here drawing numbers and titles, reports, calculations, etc.]**

Certified by: \_\_\_\_\_

[Design Team (principal)]

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Professional Registration Number: \_\_\_\_\_

Affix Professional Seal

Signed: \_\_\_\_\_

Project Co Representative

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

Date: \_\_\_\_\_

Certificate Ref No. [ ]

**DESIGN CERTIFICATE (ENVIRONMENTAL)**

*Project Agreement between Contracting Authority and Project Co dated May 18, 2023 (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.*

*This form of certificate is to be used by the Design Team, Environmental Director and Project Co for certifying the design of environmental works incorporated in the Works in accordance with the Project Agreement.*

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Design and Construction Specifications.
2. We certify that we have prepared the Design Data for [.....] [Name and list of all elements of the environmental works] in the schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
  - i. complies with all applicable Design and Construction Specifications, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following **[NTD: Inapplicable language to be deleted.]**:  
**[List, if any, the changes made by the issue of Variation(s), and any addenda to the foregoing Technical Appraisal Form];**
  - ii. complies with all applicable requirements of Schedule 17-Environmental Obligations;
  - iii. complies with all applicable design requirements of the Project Agreement;
  - iv. complies with Applicable Law and Good Industry Practice; and
  - iv. accurately describes and depicts the Works to be undertaken.



**SCHEDULE**

**[Include here drawing numbers and titles, reports, calculations, etc.]**

Certified by: \_\_\_\_\_

[Design Team (principal)]

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Professional Registration Number: \_\_\_\_\_

Affix Professional Seal

Signed: \_\_\_\_\_

Environmental Director

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Professional Registration Number: \_\_\_\_\_

Affix Professional Seal

Signed: \_\_\_\_\_

Project Co Representative

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

Date: \_\_\_\_\_

**ATTACHMENT 3**

**Form of Construction Certificate**

Certificate Ref. No. [ ]

**CONSTRUCTION CERTIFICATE (INTERIM)**

*Project Agreement between Contracting Authority and Project Co dated May 18, 2023 (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.*

This form of certificate is to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Section 3.1(d) of this Appendix A to this Schedule 10, the Construction Activities in accordance with Schedule 15 – Output Specifications to the Project Agreement. This certificate is effective as of [date].

**Construction Contractor’s Statement**

1. We certify that all the Works up to the effective date of this certificate has been designed, constructed, tested, and if applicable commissioned, and is in accordance with:
  - i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
  - ii. Applicable Law and Good Industry Practice; and
  - iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

with the exception of:

- i **[Non-Conformance Report(s) in “open” status]**

Signed: \_\_\_\_\_

[Construction Contractor representative]

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

Date: \_\_\_\_\_

**Design Team’s Statement**

2. We certify that we have examined the Works up to the effective date of this certificate in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion the Works and exception(s) stated in the Construction Contractor’s Statement above has been designed, constructed, tested and commissioned, as applicable, and is in accordance with:

- i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: \_\_\_\_\_

[Design Team (principal)]

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Professional Registration Number: \_\_\_\_\_

Affix Professional Seal

Signed: \_\_\_\_\_

Project Co Representative

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

Date: \_\_\_\_\_

Receipt of this Certificate is acknowledged.

Signed: \_\_\_\_\_

Independent Certifier

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Certificate Ref. No. [ ]

**CONSTRUCTION CERTIFICATE (COMPLETION)**

*Project Agreement between Contracting Authority and Project Co dated May 18, 2023 (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.*

This form of certificate is to be used by the Design Team, Construction Contractor and Project Co for certifying in accordance with Section 3.1(d) of this Appendix A to this Schedule 10, the Construction Activities in accordance with Schedule 15 – Output Specifications and all other construction requirements in the Project Agreement.

**Construction Contractor’s Statement**

1. We certify that [name(s) and element(s) of the Works] [the Works in respect of Substantial Completion] [the Works in respect of Final Completion] [the Works in respect of final completion of the Reinstatement Work] has been designed, constructed, [commissioned and tested] and has met the requirements for [Substantial Completion] [Final Completion] [final completion of the Reinstatement Work] in accordance with: [NTD: Inapplicable language to be deleted.]

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: \_\_\_\_\_  
 [Construction Contractor representative]  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Design Team’s Statement**

2. We certify that we have examined the [name(s) and element(s) of the Works] [the Works in respect of Substantial Completion] [the Works in respect of Final Completion] [the Works in respect of final completion of the 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 [the said element of the Works][the Works] has been designed, constructed, [commissioned and tested] and has met the requirements for [Substantial Completion] [Final Completion] [final completion of the Reinstatement Work] in accordance with: [NTD: Inapplicable language to be deleted.]

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the Variation(s) listed in paragraph 1.(iii) above].

Signed: \_\_\_\_\_

[Design Team (principal)]

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Professional Registration Number: \_\_\_\_\_

Affix Professional Seal

Signed: \_\_\_\_\_

Project Co Representative

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

Date: \_\_\_\_\_

Receipt of this Certificate is acknowledged.

Signed: \_\_\_\_\_

Independent Certifier

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 11**

**QUALITY MANAGEMENT**

[REDACTED]



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## SCHEDULE 12

### WORKS SCHEDULE REQUIREMENTS

#### 1. DEFINITIONS

- 1.1 “**Activity ID**” has the meaning given in Section 1.5(b)(i) of Appendix A.
- 1.2 “**As-built Works Schedule**” means the final Progress Works Schedule with a Data Date equal to the actual Final Completion Date.
- 1.3 “**Asset Category Breakdown**” means any of the following:
- (a) pavement and road surfaces;
  - (b) road subsurface;
  - (c) bridge and structure
  - (d) road appurtenances
  - (e) land and land improvements,
  - (f) utilities
- and “**Asset Categories Breakdown**” means all of them.
- 1.4 “**Basis of Works Schedule Report**” shall be developed in accordance with Section 13 and means a narrated report including all applicable data that document the assumptions made by Project Co to generate any of the Project Works Schedules.
- 1.5 “**Baseline Works Schedule**” means Project Co’s baseline schedule which shall comply with Section 13.2 of the Project Agreement and Section 11.
- 1.6 “**Change Log**” has the meaning given in Section 14.2(f)(ii).
- 1.7 “**Close-out Activity**” means any of the following activities or Milestone Events:
- (a) any activity to develop, prepare and finalize the Final Commissioning Program in accordance with and pursuant to Section 24 of the Project Agreement and Schedule 10 – Review Procedure;
  - (b) inspection by Contracting Authority and the Independent Certifier;
  - (c) identifying and resolving Minor Deficiencies;
  - (d) finalizing and issuing of As Built Drawings;

- (e) any other pre-Substantial Completion activity required to achieve Substantial Completion;
- (f) any other post-Substantial Completion activity required to achieve Final Completion; and
- (g) any additional activities or milestones as required by Project Co to fulfill the requirements of this Project Agreement,

and “**Close-out Activities**” means all of them.

1.8 “**Commissioning Activity**” means any of the following activities or milestone events:

- (a) any activity to develop, prepare and finalize the Final Commissioning Program in accordance with Section 24.2(c) of the Project Agreement and Schedule 10 – Review Procedure;
- (b) any activity to obtain an approval or acceptance pursuant to the Project Agreement to complete the commissioning process;
- (c) joint Contracting Authority and Project Co inspections, surveys, testing and walk through activities;
- (d) commissioning coordination meetings, workshops and draft document page turns;
- (e) all notices to be issued pursuant to Section 24 of the Project Agreement;
- (f) Road Safety Audit activities, including:
  - (i) inspections by the Road Safety Auditor;
  - (ii) review of the Road Safety Audit report; and
  - (iii) issuance of the Road Safety Certificate;
- (g) activities and requirements pursuant to Schedule 14 – Outline Commissioning and Completion Requirements of the Project Agreement;
- (h) Contracting Authority review period pursuant to Sections 24.2(c) and 24.4(c) of the Project Agreement;
- (i) Independent Certifier review period pursuant to Sections 24.3(b) and 24.4(d) of the Project Agreement; and
- (j) any additional activities or milestones as required by Project Co to fulfill the requirements of this Project Agreement,

and “**Commissioning Activities**” means all of them.

- 1.9 “**Contracting Authority Review Period**” means the time period required by Contracting Authority to review a Works Submittal measured in Business Days starting on the first Business Day after receipt of a Works Submittal from Project Co up to and including the day on which Contracting Authority returns the Works Submittal to Project Co with an assigned comment pursuant to Schedule 10 – Review Procedure.
- 1.10 “**Corrected Works Schedule**” has the meaning given in Section 4.4(a)(ii).
- 1.11 “**Critical Path**” has the meaning given in Section 1.9(a) of Appendix A.
- 1.12 “**Critical Path Activity**” means any Works Activity with a total float equal or less than zero Working Days, included in the Critical Path to achieve Scheduled Substantial Completion Date,
- and “**Critical Path Activities**” means all such Works Activities.
- 1.13 “**Critical Path Method**” or “CPM” means a method used to:
- (a) 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
  - (b) execute network scheduling using activity durations and logic ties between activities to model the plan to execute the work.
- 1.14 “**Current Look-ahead Schedule**” means the most up-to-date Look-ahead Schedule submitted by Project Co pursuant to Section 13.2(b)(iii) of the Project Agreement representing the current Project Co strategy for completing the Works in greater detail than is shown in the Current Progress Works Schedule or the Interim Works Schedule, as applicable. For clarity, a Look-ahead Schedule with a Data Date or a Schedule Revision Date earlier than 15 Business Days following the end of the previous calendar month shall not be deemed the Current Look-ahead Schedule.
- 1.15 “**Current Progress Works Schedule**” means the most up-to-date Progress Works Schedule submitted by Project Co pursuant to Section 13.2(b)(ii) of the Project Agreement representing the current Project Co strategy for completing the Works and the actual progress of the Works. For clarity, a Progress Works Report with a Data Date earlier than 15 Business Days following the end of the previous calendar month shall not be deemed the Current Progress Works Schedule.
- 1.16 “**Data Date**” means a calendar date in the life of a project upon and through which the progress status for the Works is being determined. For Proposed Works Schedule, Interim Works Schedule and the Baseline Works Schedule, the Data Date shall be equal to the date of the Early Works Agreement. For the Progress Works Schedule, the Data Date is the cut-off date for the reporting period. For Revised Baseline Works Schedule, Recovery Works

Schedule(s) and Works Micro-Schedule(s), Contracting Authority shall determine the Data Date.

1.17 “**Design Development Activity**” means any of the following activities or milestones events:

- (a) activities outlined in the Design Management Plan and the Design Quality Management Plan;
- (b) due diligence, including review of existing information, field survey, investigation and testing;
- (c) presentations / workshops on design topics expected to involve multiple Contracting Authority stakeholders or Governmental Authorities, or any other activities required to satisfy and demonstrate design conformance;
- (d) Pre-final Design Development;
- (e) Final Design Development;
- (f) Construction Document Development;
- (g) production of Works Submittals to be submitted prior to Substantial Completion, pursuant to Schedule 10 – Review Procedure;
- (h) other design development activities outlined in Section 11 of the Project Agreement; and
- (i) any additional activities as required by Project Co to fulfill the requirements of this Project Agreement,

and “**Design Development Activities**” means all of them.

1.18 “**Draft Baseline Works Schedule**” means a draft version of the Baseline Works Schedule based on the Proposed Works Schedule to be delivered by Project Co pursuant to Section 13.2(b)(i) of the Project Agreement. “**Draft Baseline Works Schedules**” means collectively all Draft Baseline Work Schedules.

1.19 “**Earned Value**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.

1.20 “**Earned Value Metrics**” has the meaning given in Section 14.2(g).

1.21 “**Interim Works Schedule**” means the schedule developed and being consistent with a Primavera Level 3 Schedule to complete the Works established between Contracting Authority and Project Co prior to or on the date of the Project Agreement attached hereto as Schedule 12 - Appendix EA, Part 2, which shows a detailed Critical Path for (i) any

Works undertaken by the preferred proponent prior to or on the date of the Project Agreement, and (ii) any Works undertaken by Project Co for approximately 6 months following Financial Close.

1.22 “**Key Commodities**” means essential goods and services which play a major role in performing Works Activities and finishing the Project on time. To clarify, key commodities include any of the following:

- (a) commodities that span 30% of the Project;
- (b) each commodity that is involved with multiple activities; and
- (c) commodities that are associated with the Critical Path.

1.23 “**Key Works Activity**” means any of the following activities:

- (a) all Commissioning Activities shown for the overall project to achieve Substantial Completion, with the exception of Contracting Authority and Project Co walk through activities that shall be shown for each intended walk through and not as a once off activity for the overall project; and
- (b) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Key Works Activities**” means all of them.

1.24 “**Key Works Milestone**” means any of the following Milestone Events:

- (a) Commercial Close;
- (b) Financial Close;
- (c) Open Project office, pursuant to Part 1 of Schedule 15-2 – Design and Construction requirements;
- (d) Substantial Completion;
- (e) Final Completion;
- (f) Longstop Date;
- (g) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Key Works Milestones**” means all of them.

1.25 “**Look-ahead Schedule**” shall be developed in accordance with Section 16 and means:

- 
- (a) those elements of the Progress Works Schedule developed with appropriate level of details to support the planning of Contracting Authority activities, including but not limited to the Schedule 10 – Review Procedure activities and the activities to monitor Project Co’s completion of the Works, including all Works Milestones, Works Activities and any other applicable milestones and activities in progress, starting, or ending during the 12 week period starting 15 Business Days following the end of a previous calendar month; and
- (b) the Interim Works Schedule.
- 1.26 **“Longest Path”** means longest continuous path of Works Activities through a project, which controls Scheduled Substantial Completion Date.
- 1.27 **“Major Works Element”** means the items set out in the column labelled **“Major Works Elements”** in the table set out in Appendix D.
- 1.28 **“Micro-Schedule Works Activity”** means any of the following activities:
- (a) any activity requiring the involvement of a Contracting Authority Party, or Stakeholder for the activity to start and/or finish;
- (b) any activity required to start and/or finish for an activity or operation of a Contracting Authority Party, or Stakeholder to start and/or finish;
- (c) all Works involving high degrees of interaction with or participation by Contracting Authority, including, but not limited to, with respect to witness or hold points by Contracting Authority to support the progress of the Works as agreed to by Contracting Authority;
- (d) activities outlined in the Construction Quality Management Plan;
- (e) activities in the Commissioning Schedule;
- (f) traffic management, detours, staging, and closures including vehicle and pedestrian traffic; and
- (g) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement in related to the activities requested by Contracting Authority,
- and **“Micro-Schedule Works Activities”** means all of them.
- 1.29 **“Micro-Schedule Works Milestone”** means any of the following Milestone Events:
- (a) any milestone signifying a critical handover of work between Contracting Authority and Project Co; and

- (b) any additional milestone as required by Project Co to fulfill the requirements of the Project Agreement in related to the activities requested by Contracting Authority, and “**Micro-Schedule Works Milestones**” means all of them.

1.30 “**Milestone Event**” means, for each of the Works Activities,

- (a) the start and completion of each deliverable and the identification of any external constraints which are associated with the applicable activity;
- (b) interfaces with Stakeholders associated with the applicable activity; and
- (c) Witness Points.

1.31 “**Near Critical Path Activity**” means any Works Activity with a total float equal or less than 20 Working Days, including all Works Activities on the Critical Path to achieve Scheduled Substantial Completion Date, and “**Near Critical Path Activities**” means, collectively, all such Works Activities.

1.32 “**Permitting, Licensing, Approvals and Agreements Activity (PLAA)**” means for each Permit, License, Approval or Agreement any of the following activities or Milestone Events associated with such Permits, Licences, Approvals and Agreements, including:

- (a) consultation and/or coordination activities with the applicable federal, provincial, municipal authorities, utility service providers, and property owners (if applicable);
- (b) preparation of documentation for the permit, licence or approval request, including pre-submission co-ordination and consultation;
- (c) review and approval of the permit, licence or approval starting on the date the submission is made to the relevant authority and ending on the date it is anticipated the decision would be made; and
- (d) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Permitting, Licensing, Approvals and Agreements Activities**” means collectively all such activities and Milestone Events.

1.33 “**Primary Works Activity**” means any of the following activities using all levels of the WBS in Appendix D to address all Primary Components separately:

- (a) Permitting, Licensing, Approval and Agreements Activities for all Project Co Permits, Licenses and Approvals required from regulatory agencies for each Works element requiring such permit, license or approval in sufficient detail to determine how these activities affect the Critical Path, as well as how these activities affect the commencement date of onsite construction;

- (b) activities representing the work required to meet any conditions of all Permits, Licenses, Approvals and Agreements required from regulatory agencies for each Works element requiring such permit, license or approval;
- (c) Stakeholder Consultation Activities for each Transportation Environmental Study Report and Design and Construction Report planned by Project Co;
- (d) a summary activity representing the related Systems Commissioning Activities per system; and
- (e) for each construction section:
  - (i) Mobilization and preconstruction condition surveys;
  - (ii) Clearing & Grubbing;
  - (iii) Utility Relocation Activities not yet listed elsewhere;
  - (iv) Demolition, Removal & Site preparation per work zone not scheduled elsewhere; and
  - (v) a summary activity representing the related Project Close Activities;
- (f) for each Major Works Element and any other Works element required by Project Co in order to denote the full scope of Works in the Project Works Schedule:
- (g) a summary activity representing the related Procurement Activities and installation for each notable component;
- (h) a summary activity representing the related Utility Relocation Activities; “Construction, erection or installation”;
- (i) a summary activity representing the Procurement Activities for any long lead items;
- (j) construction, erection or installation of primary components for each of the Major Works Elements and any other Works element component required by Project Co in order to denote the full scope of Works in the Project Works Schedule;
- (k) a summary activity representing the related Close-out Activities;
- (l) restoration of staging areas per staging area; and
- (m) any other activities as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Primary Works Activities**” means all of them.

1.34 “**Primary Works Milestone**” means any of the following milestones:



- (a) complete Pre-final Design Development Submittals;
- (b) complete Final Design Development Submittals;
- (c) complete Construction Document Submittals;
- (d) complete Utilities Relocation;
- (e) complete the installation, integration, and commissioning of ITS equipment and infrastructure; and
- (f) any other milestones required by Project Co to fulfill the requirements of the Project Agreement,

and “**Primary Works Milestones**” means all of them.

1.35 “**Procurement Activity**” means any of the following activities or Milestone Events for long-lead items such as prefabricated or preassembled structures or structural elements, high-mast poles, and fibre-optic cabling:

- (a) issuance of purchase order or contract finalization including;
  - (i) coordination of the procurement with the Works;
  - (ii) establishment of procurement processes and bundling strategies; and
  - (iii) validation of technical requirements of long-lead items;
- (b) plant setup and certification;
- (c) manufacturing or assembly of long-lead items;
- (d) pre-delivery factory quality control and acceptance testing;
- (e) delivery to site,
- (f) quality Assurance and material acceptance;
- (g) commencement and completion of inspection, integration, testing, commissioning, certification, and training; and
- (h) any additional milestones as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Procurement Activities**” means, , collectively, all of the Procurement Activities.

1.36 “**Progress Works Schedule**” shall be developed in accordance with Section 15 and means the working schedule indicating for a specific reporting period the actual progress, actual

Works Milestone dates, actual Works Activity start and end dates, and revised forecast dates and activity durations for all incomplete Works Activities and Works Milestones, and any mitigation or recovery plan, shown in comparison to the baseline as defined by the Baseline Works Schedule or in comparison to the Recovery Works Schedule, as may be applicable, developed to a level of detail to document Project Co's actual performance to complete the Works, and facilitate the analysis of any variance from the Baseline Works Schedule and forecasting of future performance to complete the Works and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to Sections 31.2(a), (b) and (d) of the Project Agreement, actual claims for Delay made pursuant to Section 31.2(f) of the Project Agreement or Variation.

- 1.37 **“Project Works Schedules”** means, as applicable, any or all of the Current Progress Works Schedule, Current Look-ahead Schedule, Corrected Works Schedule, Proposed Works Schedule, Baseline Works Schedule, the Revised Baseline Works Schedule(s), Look-ahead Schedule, Progress Works Schedule, Recovery Works Schedule(s), and Works Area Micro-Schedule.
- 1.38 **“Project Scheduler”** means the Project Co manager responsible to develop and maintain the Project Schedules and related reports.
- 1.39 **“Project Schedules Quality Management Plan”** has the meaning given in Schedule 11 – Quality Management.
- 1.40 **“Proposed Works Schedule”** means the schedule to complete the Works identified as the “Proposed Works Schedule” agreed to between Contracting Authority and Project Co prior to or on the date of the Project Agreement attached hereto as Appendix E, which includes all the elements required to be included in the Baseline Works Schedule developed to a level of detail to support monitoring the progress of the Works, determining the likely future progress of the Works, and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to Sections 31.2(a), (b) and (d) of the Project Agreement, actual claims for Delay made pursuant to Section 31.2(f) of the Project Agreement or Variation until such time as the Draft Baseline Works Schedule becomes the Baseline Works Schedule pursuant to Section 13.2(d) of the Project Agreement.
- 1.41 **“Quantity”** means material resources assigned with agreed unit of measure which is substantiated by Project Co and accepted by Contracting Authority
- 1.42 **“Recovery Works Schedule”** has the meaning given in Section 13.4(a)(iv)(A) of the Project Agreement.
- 1.43 **“Recovery Works Schedule Report”** has the meaning given in Section 13.4(a)(iv)(B) of the Project Agreement.
- 1.44 **“Retired Activity”** has the meaning given in Section 1.11(a) of Appendix A.

1.45 “**Review Procedure Activities Register**” means a submittals register that Project Co develops, monitors, and regularly updates, where such register tracks all Works Submittals (including all re-submittals) that Project Co is required to provide in accordance with Schedule 10 – Review Procedure from and after Financial Close through to Final Completion.

1.46 “**Review Procedure Activity**” means any of the following activities or milestones:

- (a) the proposed Project Co submission of each Works Submittal (including, for certainty, each Design Development Submittal and Construction Document Submittal) indicated as an activity where the first day of the activity shall be the day on which Project Co submit the Submittal to Contracting Authority for Review followed by the Contracting Authority Review Period starting on the second day of the activity shown in the schedule and the time provided to Contracting Authority to complete the review as governed by this Project Agreement;
- (b) a buffer period to resolve outstanding non-conformance items and incorporate comments after the review of each Works Submittal before the associated construction activity commences, for clarity the buffer may be indicated as a positive lag after the Contracting Authority Review Period except for Critical Path construction activities for which the buffer between the preceding Contracting Authority Review Period and the construction activity shall be shown as an identifiable activity;
- (c) specific activities and approvals that are the responsibility of Contracting Authority that must coordinate with the Works; and
- (d) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Review Procedure Activities**” means all of them.

1.47 “**Revised Baseline Works Schedule**” has the meaning given in Section 12.1.

1.48 “**Schedule Revision Date**” means the last date on which changes were made to the specific Project Works Schedule including, but not limited to, the content, calendars or working time, work breakdown structure, groupings, sequencing logic, activity or milestone relationships, activity or milestone descriptions, any work breakdown structure code, the addition or deletion of any activity or milestone, costs data, or any settings, but excluding updates to indicate the actual progress of each activity, actual Works Milestone dates, actual Works Activity start and end dates, and revised forecast dates and activity durations for all incomplete Works Activities and Works Milestones.

1.49 “**Secondary Works Activity**” means any of the following activities:

- (a) Utility Relocation Activities for each specific occurrence of a utility;

- (b) for each Major Works Element and any other Works element required by Project Co in order to denote the full scope of Works in the Project Works Schedule;
- (c) all Procurement Activities for any prefabricated or preassembled structures or structural elements. (e.g. pre-cast girders, steel girders);
- (d) construction, erection or installation of secondary components for each of the Major Works Elements and any other Works element component required by Project Co in order to denote the full scope of Works in the Project Works Schedule; any settlement, curing, burn-in or any other period of time that would delay the subsequent activity or use of the primary and secondary components of each Major Works Elements;
- (e) all Procurement Activities;
- (f) all Close-out Activities;
- (g) Commissioning Activities, for clarity, Project Co shall ensure that all notifications are issued in accordance with the Project Agreement and shall not rely on the inclusion of these activities in the schedule, the inclusion of these activities shall therefore not be deemed a notification or request to Contracting Authority to participate in any of the Commissioning Activities;
- (h) any work to be carried out by other contractors as agreed to with Contracting Authority to clearly indicate any collaboration, coordination, or integration efforts required to make it possible to complete the Additional Works; and
- (i) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Secondary Works Activities**” means all of them.

1.50 “**Secondary Works Milestone**” means any other milestone(s) as required by Project Co to fulfill the requirements of the Project Agreement.

1.51 “**Stakeholder Consultation Activity**” means any of the following activities or milestones:

- (a) Stakeholder partnering sessions;
- (b) Design and Construction Report development and finalization;
- (c) public information open -house meetings;
- (d) open period for public commenting;

- (e) consultation, submission, review and approval process of any municipal, provincial, federal, or any other authority having jurisdiction, including for example Trans-Northern Pipeline;
- (f) milestones noting decisions that support final design integration between Contracting Authority’s systems and Project Co’s systems;
- (g) Design Review Meetings;
- (h) presentations / workshops on design topics expected to involve multiple Contracting Authority stakeholders, or any other activities required to satisfy and demonstrate design conformance; and
- (i) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Stakeholder Consultation Activities**” means all of them.

1.52 “**Systems Commissioning Activity**” means for each system per phase or section of the Works any of the following activities:

- (a) inspection, testing and certification activities;
- (b) systems integration activities;
- (c) re-balancing and re-commissioning of systems required as a consequence of the phased nature of the Works; and
- (d) any other activity as required by Project Co to fulfill the requirements of the Project Agreement,

and “**Systems Commissioning Activities**” means all of them.

1.53 “**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.

1.54 “**Utility Relocation Activity**” means for each system per phase or section of the Works any of the following activities:

- (a) approvals by Utility owners;
- (b) relocation for each specific occurrence of a utility;
- (c) inspection, acceptance and hand-back of the Utility to the Utility owner; and

- (d) any other activity as required by Project Co to fulfill the requirements of this Project Agreement,

and “**Utility Relocation Activities**” means all of them.

1.55 “**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.*”

1.56 “**Working Day**” means a day on which Project Co can reasonably schedule a specific Works Activity considering the requirements of the Project Agreement and any other constraints.

1.57 “**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

1.58 “**Works Activity**” means any of the following activities as defined in this Schedule 12 or any other activity to complete the Works as defined in this Project Agreement,

- (a) Design Development Activities;
- (b) Permitting, Licensing, Approvals and Agreements Activities;
- (c) Procurement Activities;
- (d) Commissioning Activities;
- (e) Construction Activities;
- (f) Close-Out Activities;
- (g) Stakeholder Consultation Activities;
- (h) Utility Related Activities;
- (i) Review Procedure Activities; or
- (j) activities to be performed:
  - (i) that cannot be started or finished without the involvement of Contracting Authority or one or more stakeholders; or
  - (ii) that must be started or finished before a Contracting Authority activity or Stakeholder activity can be started or finished,
- (k) Primary Works Activities;

- (l) Secondary Works Activities; or
- (m) Micro-Schedule Works Activities;

and “**Works Activities**” means all such activities.

- 1.59 “**Works Area Micro-Schedule**” shall be developed in accordance with Section 13.2(e) of the Project Agreement and Section 17 and means any portion of the Progress Works Schedule for a specific portion of the Works that has been developed and is consistent with a Primavera Level 5 Schedule to support effective day-by-day or hour-by-hour coordination of the Works described in Section 13.2(e) of the Project Agreement; and each Works Area Micro-Schedule shall further contain the dates for events and activities (including Works Milestones) that are consistent with those set out in the Progress Works Schedule.
- 1.60 “**Works Milestone**” means any of the Key Works Milestones, Primary Works Milestones, Secondary Works Milestones, or Micro-Schedule Works Milestones or any other milestone included in the Project Works Schedules.
- 1.61 “**Works Submittals**” has the meaning given in Schedule 10 – Review Procedure.
- 1.62 “**Works Schedule Progress Report**” shall be developed in accordance with Section 14 and means a narrated report detailing the progress made up to the Data Date, the variance between the Project Works Schedules provided compared to the previous version of the Project Works Schedules and risk items.

## 2. **DOCUMENTS COMPRISING THE WORKS SCHEDULE REQUIREMENTS SCHEDULE**

- 2.1. This Schedule 12 is comprised of the following documents:
- (a) these general provisions;
  - (b) Appendix A – Project Works Schedule Technical Requirements
  - (c) Appendix B – Project Works Schedule EVM Reporting Requirements
  - (d) Appendix C – Activity Code and User Defined Fields (UDF) Requirements
  - (e) Appendix D – Major Works Elements and Primary and Secondary Components
  - (f) Appendix E - Proposed Works Schedule and Interim Works Schedule
  - (g) Appendix F – Project Works Schedule Checklist

### 3. DEVELOPMENT OF PROJECT WORKS SCHEDULES

#### 3.1. Types and Purposes of Project Works Schedules

- (a) Project Co acknowledges and agrees that it will develop and maintain three types of Project Works Schedules as follows:
- (i) baseline schedules consisting of the Proposed Works Schedule, Interim Works Schedule, the Baseline Works Schedule and, if required, a Revised Baseline Works Schedule(s), each of which is required to demonstrate Project Co's intended schedule to complete the Works and from which progress will be measured;
  - (ii) monthly Progress Works Schedules and, if applicable, Works Area Micro-Schedules, Look-ahead Schedule, each of which are required to demonstrate Project Co's actual progress of the Works up to and including the applicable Data Date; and
  - (iii) if requested by Contracting Authority, a Recovery Works Schedule(s) which meets the requirements set out in Section 13.3 of the Project Agreement and demonstrates Project Co's plan to mitigate delay and accelerate the Works.

#### 3.2. Sequence of Project Works Schedules

- (a) Subject to the terms and conditions of this Schedule 12, Project Co acknowledges and agrees that the progression and development of the Project Works Schedules shall be as follows:
- (i) Once the Proposed Works Schedule has been finalized in accordance with Section 4.2, it shall become the Proposed Works Schedule applicable to the Works until replaced by the finalized Baseline Works Schedule;
  - (ii) Project Co shall submit the Draft Baseline Works Schedule within 75 calendar days of Financial Close in accordance with Project Co's obligations set out in Section 13.2 of the Project Agreement and this Schedule 12 for review in accordance with Schedule 10 – Review Procedure;
  - (iii) once the Baseline Works Schedule has been finalized in accordance with Section 4.2, it shall become the Baseline Works Schedule that is applicable to the Works until Final Completion, unless it is replaced by a Revised Baseline Works Schedule in accordance with Section 12;
  - (iv) for every month, from the month after Financial Close until Final Completion, Project Co shall submit an updated Progress Works Schedule in accordance with Section 15 and Schedule 10 – Review Procedure.



Project Co shall progress each updated Progress Works Schedule from the previous month's Progress Works Schedule and shall,

- (A) for the period prior to the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Proposed Works Schedule and the immediately preceding Progress Works Schedule;
  - (B) for the period after the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Baseline Works Schedule and the immediately preceding Progress Works Schedule; and
  - (C) label the Progress Works Schedule(s) in sequence as Progress Works Schedule – MMYYYY Revision 1, Progress Works Schedule – MMYYYY Revision 2, and so on; and
- (v) once each Progress Works Schedule (Progress Works Schedule – MMYYYY Revision 1, 2, etc.) has been finalized or considered acceptable in accordance with Section 4.2, the applicable revision of the Progress Works Schedule shall become the active Progress Works Schedule for the Project.

#### **4. SUBMISSION AND REVIEW OF PROJECT WORKS SCHEDULES**

- 4.1. Each Project Works Schedule shall be submitted to Contracting Authority in draft and shall be reviewed by Contracting Authority and, if applicable, the Independent Certifier and third parties, in accordance with Schedule 10 – Review Procedure.
- 4.2. 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 Minor Non-Conformance Designation. For clarity, Project Co is still obliged to correct all non-conformances in any Project Works Schedule and detail to Contracting Authority how each Non-Conformance has been addressed before the Project Works Schedule is used for any purpose under this Project Agreement.
- 4.3. Contracting Authority may, in its sole discretion and at any time, convene a meeting or meetings with Project Co to review a Project Works Schedule and identify those Project Co Parties that are required to attend the meeting.
- 4.4. If a Project Works Schedule submitted by Project Co receives a “RE-SUBMIT”, “MAJOR NON-CONFORMANCE” or a “CRITICAL NON-CONFORMANCE” comment from Contracting Authority the following shall apply:
  - (a) Contracting Authority may, in its sole discretion and at any time, require Project Co to submit,

- (i) additional information (including draft versions of an updated Project Works Schedule) to supplement the information originally provided in the Project Works Schedule or the Baseline Works Schedule Progress Report and such information shall be provided promptly by Project Co; and
  - (ii) one or more corrected versions of the applicable Project Works Schedule (each a “**Corrected Works Schedule**”) and such Corrected Works Schedule shall be provided by Project Co promptly;
- (b) for clarity,
- (i) any information provided pursuant to Section 4.4(a)(i) is not a Works Submittal;
  - (ii) a Corrected Works Schedule is a Works Submittal, and the requirements of Schedule 10 – Review Procedure apply; and
  - (iii) all liquidated damages and Non-Conformance Reports associated with the submission and review of Project Works Schedules do not apply to the submission and review of Corrected Works Schedules;
- (c) in addition to complying with the Corrected Works Schedule requirements set out in Section 4.4(a)(i), 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
- (d) for the purpose of ensuring that a Progress Works Schedule is finalized for each month of the Project from Financial Close to Final Completion, Contracting Authority may, in its sole discretion, require Project Co to continue to submit one or more Corrected Works Schedules for a particular month (even after the deadline for the next monthly submission of the Progress Works Schedule) until the Corrected Works Schedule for that particular month receives a No Comment or Minor Non-Conformance Designation.

## 5. GENERAL REQUIREMENTS

- 5.1. Project Co shall schedule the Works to conform to all the requirements of the Project Agreement. Project Works Schedules shall contain sufficient detail to enable Contracting Authority to:
- (a) monitor the planned schedule for the Works and the progress to complete the Works, and determine whether Project Co is likely to achieve Substantial Completion by the Scheduled Substantial Completion Date; and

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- (b) manage Contracting Authority interfaces and analyze the schedule impacts of any potential delay, Delay Event or Variation.
- 5.2. Project Co shall prepare the Project Works Schedules in accordance with Good Industry Practice for a large complex project and in accordance with the Project Agreement and include appropriate schedule activities, logic, and sequencing with achievable production rates and realistic assumptions.
- 5.3. Project Co shall base all the Project Works Schedules on the actual sequencing and durations anticipated to complete the Works.
- 5.4. Project Co shall include all Works Activities as they are defined in this Schedule 12;
- 5.5. Project Co shall include cost values and Quantities for all Works Activities to enable the calculation of the required Earned Value Metrics.
- 5.6. Project Co shall prepare detailed computerized Project Works Schedules using the Critical Path Method network and a Baseline Works Schedule dependent cash flow forecast, each in a form approved by Contracting Authority.
- 5.7. Project Co shall divide the applicable Works into activities and milestones with appropriate phases, sequencing, interdependencies and logic to show Project Co's overall approach to the planning and execution of the Works including, but not limited to, all Works Activities, all Works Milestones, and any other activities related to mobilization and setup, manufacturing and construction, including self-performed works, construction staging and sequencing, temporary works, subcontractor work, Variations, quality control and quality assurance activities, integration and commissioning activities, and any other activities required both on and off the Site to complete the Works up to Final Completion.
- 5.8. Project Co shall:
- (a) continuously monitor and compare the progress of the Works against the Baseline Works Schedule (or a Recovery Works Schedule, if applicable), the Current Progress Works Schedule, and Look-ahead Schedule;
  - (b) update the Project Works Schedules in accordance with the Project Agreement;
  - (c) update the cash flow projections set out in the Works Report;
  - (d) maintain the continuity of the Project Works Schedule's Critical Path network for all updates and revisions;
  - (e) immediately notify Contracting Authority of any variance or potential variance in any Works Activities or Works Milestones if the affected Works Activities or Works Milestones has any known or readily apparent impact on Contracting Authority including integration and coordination issues with Contracting Authority or commissioning issues involving Contracting Authority;

- (f) notify Contracting Authority of any variance or potential variance in any Works Activities or Works Milestones in accordance with Project Co's obligations set out in Section 31.2 of the Project Agreement; and,
- (g) at the request of Contracting Authority, provide applicable industry benchmarks or benchmarking data or detailed back-up calculations and assumptions for the Works Activities durations.

5.9. Upon discovering, Project Co shall immediately provide notification to Contracting Authority Representative if the amount of total float on any Critical Path Activity reduces by five Working Days or more from the amount of total float shown in the immediate previous submission of a Progress Works Schedule.

## 6. PROJECT WORKS SCHEDULE MEETINGS AND WORKSHOPS

### 6.1. Initial Meetings to Discuss Draft Baseline Works Schedule

- (a) Prior to the submission of the Draft Baseline Works Schedule by Project Co pursuant to Section 13.2(b) of the Project Agreement, Project Co shall schedule and attend a minimum of two planning meetings with Contracting Authority to discuss the scope, phasing and sequencing of the Project, the Works Activities and the Works Milestones and to resolve questions or issues relating to Project Co's preparation of the Draft Baseline Works Schedule.
- (b) The planning meetings shall take place at the date and time mutually agreed upon by Contracting Authority and Project Co provided that the first meeting shall be completed no later than 30 calendar days following Financial Close and the second meeting shall be completed no later than 60 calendar days following Financial Close.

### 6.2. Ongoing Meetings to Discuss Project Works Schedule

- (a) Unless otherwise agreed to by Contracting Authority and Project Co, at least twice and no more than five times per calendar year, upon Contracting Authority's written request, Project Co shall meet with Contracting Authority to explain Project Co's strategy, activities, Critical Path and areas of concern or particular challenges associated with the performance of the Works or any part thereof in relation to the Progress Works Schedule or any other Project Works Schedule for the upcoming six month period. The meetings shall take place at the date and time mutually agreed upon by Contracting Authority and Project Co.
- (b) To prepare for a Works Committee meeting, the Project Co Representative, the Project Scheduler and the Contracting Authority Representative shall meet in the week preceding a Works Committee meeting to discuss the Current Progress Works Schedule, the Current Look-ahead Schedule and any other Project Works Schedule related matters.

### 6.3. Baseline Works Schedule Meeting Procedures and Practices

- (a) The meetings described in Sections 6.1(a) and 6.2(a) shall have the following procedures and practices:
  - (i) Project Co shall chair the meeting.
  - (ii) Project Co shall prepare the agenda, subject to Contracting Authority comments.
  - (iii) The agenda and accompanying materials shall be circulated to the attendees at least five Business Days in advance of the meeting date.
  - (iv) Minutes of the meetings, recommendations and requests for matters to be escalated to the Works Committee shall be recorded and maintained by Project Co.
  - (v) Project Co shall distribute the minutes of the meeting within five Business Days of the meeting. Unless Contracting Authority notifies Project Co within five 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 be in agreement with the minutes.

## 7. AUDIT, MONITORING, REPORTING AND SUBMISSION REQUIREMENTS

### 7.1. Audit Requirements:

- (a) In the Project Works Schedules Quality Management Plan, Project Co shall include and execute a process to:
  - (i) audit the draft of the Baseline Works Schedule and every updated Baseline Works Schedule thereafter (or a Recovery Works Schedule(s), if applicable) to confirm conformance to the requirements in the Project Agreement. The audit report shall include, without limitation, a checklist in the form attached as Appendix F and shall be submitted with the draft of the Baseline Works Schedule, and every updated Baseline Works Schedule thereafter; and
  - (ii) audit the Current Progress Works Schedule, the Current Look-ahead Schedule, the latest Basis of Works Schedule Report, and the latest Baseline Works Schedule Progress Report on a quarterly basis to confirm conformance to the requirements in the Project Agreement, and to confirm the accuracy of the progress and as-built information. Project Co shall submit the audit report to Contracting Authority no later than 10 Business Days after any audit,

in each instance, the audit report shall be reviewed and signed by the Project Scheduler, Quality Director and the Project Co Representative.

#### 7.2. Monitoring Requirements

- (a) Project Co shall identify potential variances between current scheduling and the scheduled completion dates and implement necessary adjustments in the Progress Works Schedule in order to meet the Scheduled Substantial Completion Date and the Scheduled Final Completion Date.
- (b) Project Co shall monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Current Progress Works Schedule and Current Look-ahead Schedule and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met.
- (c) Project Co shall obtain from Project Co Parties a schedule showing the order number, vendor's name, Shop Drawing status, manufacturing lead time and delivery date of all critical material and equipment required for the Works, and upon Contracting Authority's request, provide the same to Contracting Authority.

#### 7.3. Reporting Requirements

- (a) Project Co shall notify the Contracting Authority Representative if, at any time, the actual progress of the Works has fallen significantly behind the Baseline Works Schedule or a current Recovery Works Schedule, if applicable, including, for clarity, any failure of Project Co to achieve a Key Works Milestone or Primary Works Milestone pursuant to Section 13.4 of the Project Agreement.
- (b) Project Co shall notify the Contracting Authority Representative if, at any time, the actual progress of the Works is significantly ahead of the Baseline Works Schedule and shall comply with Section 13.4 and 13.5 of the Project Agreement.
- (c) Project Co shall notify the Contracting Authority Representative of any revisions required to the Project Works Schedules as a result of any extension of the Scheduled Substantial Completion Date in accordance with Section 1.6(a) of Schedule 22 – Variation Procedure.

#### 7.4. General Submission Requirements

- (a) Project Co shall submit the Project Works Schedules, Basis of Works Schedule Report, and the Works Schedule Progress Report to Contracting Authority pursuant to Section 13.2 of the Project Agreement.
- (b) Project Co shall review and approve the Project Works Schedules, Basis of Works Schedule Report and the Works Schedule Progress Report and shall indicate same

by including the Project Co Representative's dated signature on the front cover of each document.

- (c) Project Co shall submit the draft of the Baseline Works Schedule, Basis of Works Schedule Report, As-built Works Schedule, Recovery Works Schedule(s), the draft of a Works Area Micro-Schedule, Progress Works Schedule and any revision to any of these submittals in accordance with the Schedule 10 – Review Procedure.
- (d) Project Co shall submit all other Project Works Schedules and related reports to Contracting Authority in accordance with the Project Agreement and this Schedule 12 and Contracting Authority may comment on these other Project Works Schedules in its sole discretion. .
- (e) All tabular information including numerical data or calculations shall be submitted in two electronic soft copy file formats. The first format shall be in the Microsoft Excel file format that would allow Contracting Authority to review formulas and manipulate the data for the purpose of evaluation and the second format shall be a high resolution PDF version.
- (f) The filename of each of the electronic files submitted shall indicate the project name acronym, schedule type, revision number and the Data Date in the format 'YYYYMMDD'. e.g. the 5th version of the Progress Works Schedule for the ABC project indicating the progress of the works up to 31 October 2015 shall be named "ABC Updated Baseline Works Schedule Rev 05 – 20151031".

## **8. PROJECT WORKS SCHEDULE REQUIREMENTS FOR SCHEDULE 10 WORKS SUBMITTALS**

- 8.1. Project Co shall provide for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow for a sufficient Contracting Authority Review Period for each Works Submittal taking into account both the resources necessary to be available to the Contracting Authority Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Baseline Works Schedule or current Recovery Works Schedule, as applicable.
- 8.2. In scheduling Review Procedure Activities and in the performance of the Works, Project Co shall allow adequate time prior to performing the Works that are the subject of the Review Procedure Activities, for the Review Procedure Activities and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with Part A of Schedule 10 – Review Procedure. Project Co shall schedule all Review Procedure Activities to maintain a buffer period between a Contracting Authority Review Period and the subsequent Works Activity.

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- 8.3. No Contracting Authority Review Period in respect of a Works Submittal shall commence until a complete package for the Works Submittal is submitted for review by Project Co in accordance with the requirements of Schedule 10 – Review Procedure.
- 8.4. Project Co shall include in the Project Works Schedules the Contracting Authority Review Period duration and sequencing logic as defined in the Project Agreement, and specific constraint for the review of each Design Development Submittal and Construction Document Submittal as set out in Appendix A.
- 8.5. Project Co shall allow for a minimum Contracting Authority Review Period of:
- (a) 17 Business Days following receipt thereof for all Design Development Submittals (which for clarity includes all environmental Works Submittals as outlined in Table 3.5 of Schedule 17 of the Project Agreement), unless otherwise indicated in this list;
  - (b) 17 Business Days following receipt thereof for all Construction Document Submittals, unless otherwise indicated in this list;
  - (c) 20 Business Days following receipt thereof for the draft of the Baseline Works Schedule or any other Project Works Schedules or related reports, provided that with respect to the drafts of the Baseline Works Schedule, the Contracting Authority Review Period shall be 20 Business Days;
  - (d) 30 Business days for Quality Plans, Environmental Management Plans, ESA Permit Management Plans, Traffic Management Plans, Safety Management Plans, Stormwater Quality Management Plan; and any other Management Plans; and
  - (e) 15 Business Days following receipt thereof for all other Works Submittals,

or such longer period as the Parties may agree, provided that if Project Co has made major changes to the content, grouping or quantity of Works Submittals, or the Works Submittal was not submitted to Contracting Authority on the date indicated in Current Look-ahead Schedule such period of time shall be increased by Project Co, taking into account the factors set forth in this Section 8. For clarity, the Contracting Authority Review Period shall commence only when all required documentation, including any forms, mark ups, and blacklines from previous versions, are provided.

- 8.6. Project Co shall include the relevant activity relationships in the Project Works Schedules to indicate the Works Activities dependent on the specific Contracting Authority Review Period for a specific Works Submittal.

## 9. PROJECT WORKS SCHEDULES TECHNICAL REQUIREMENTS

- 9.1. Project Co shall comply with the Baseline Works Schedule technical requirements set out in Appendix A.



**10. EVM REPORTING REQUIREMENTS**

- 10.1. Project Co shall comply with the Earned Value Management requirements set out in Appendix B.

**11. BASELINE WORKS SCHEDULE**

- 11.1. The Baseline Works Schedule is a baseline representation of Project Co's initial strategy to complete the Works.
- 11.2. The Baseline Works Schedule shall be an unaltered copy of the Proposed Works Schedule for all information up to the date on which the Draft Baseline Works Schedule is submitted to Contracting Authority pursuant to Section 13.2 of the Project Agreement. For clarity, all Works Activities and Works Milestones scheduled to start before the date on which the Draft Baseline Works Schedule is submitted to Contracting Authority shall remain unchanged, Project Co may refine the remaining activity sequencing and durations only if these strategic or assumption changes are documented and explained in the Basis of Works Schedule Report and the forecast the Substantial Completion Date shall be equal to the Scheduled Substantial Completion Date and all other Key Milestone dates shall remain unchanged.
- 11.3. Project Co shall not schedule as part of the Draft Baseline Works Schedule any new Works Activities that were not included in the Proposed Works Schedule on the date of this Project Agreement, which require any material input, review or participation or decision from Contracting Authority or any Contracting Authority Party without obtaining the prior agreement of the Contracting Authority Representative.
- 11.4. The Baseline Works Schedule shall:
- (a) have a Data Date equal to the date of the Financial Close, unless the Baseline Works Schedule is revised as a result of a Variation Confirmation pursuant to Schedule 22 – Variation Procedure in which case the Data Date for the revised Baseline Works Schedule shall be the Variation Confirmation Date;
  - (b) not have any progress data for any Works Activity or Works Milestone;
  - (c) not include any delays;
  - (d) have activities, including all Works Activities, which are Traceable to those that appeared in the Proposed Works Schedule;
  - (e) conform to the requirements of this Schedule 12;
  - (f) address any comments on the Proposed Works Schedule provided by Contracting Authority;

- (g) identify all differences between the Proposed Works Schedule and the Baseline Works Schedule; and
  - (h) shall not change any Activity ID numbers from the corresponding Activity ID numbers set out in the Proposed Works Schedule.
- 11.5. In its review of the Baseline Works Schedule pursuant to Schedule 10 – Review Procedure, Contracting Authority may request that additional milestones or activities be incorporated into the Progress Works Schedule included in the Works Schedule. Upon such request, Project Co shall promptly revise the Baseline Works Schedule to include the additional milestones and activities.
- 11.6. The Draft Baseline Works Schedule and the Baseline Works Schedule shall include at a minimum:
- (a) The title “Draft Baseline Works Schedule” until it becomes the Baseline Works Schedule pursuant to Section 13.2(d) of the Project Agreement and “Baseline Works Schedule” thereafter.
  - (b) All elements included in the Proposed Works Schedule.
  - (c) The data from the Proposed Works Schedule shall be saved as the baseline for the Draft Baseline Works Schedule and shall be shown together with the revised dates and durations to graphically indicate the variances between the Proposed Works Schedule and the Draft Baseline Works Schedule. When the Draft Baseline Works Schedule becomes the Baseline Works Schedule pursuant to Section 13.2(d) of the Project Agreement, the data from the Draft Baseline Works Schedule shall become the new baseline data for the Project Works Schedules. For clarity, each activity in the Draft Baseline Works Schedule shall have two horizontal bars indicating the Proposed Works Schedule baseline, and the revised Draft Baseline Works Schedule proposed baseline.
  - (d) Key Works Milestones grouped together at the top of the Baseline Works Schedule in a section with the heading “Key Works Milestones”.
  - (e) In a separate section titled “Review Procedure” a summary activity representing the related Design Development Activities and a summary activity representing the Review Procedure Activities for each Major Works Elements. Project Co may create a single summary activity representing the Design Development Activities or the Review Procedure Activities of multiple Major Works Elements if the design for these Major Works Elements will be consolidated into a single submission.
  - (f) Activities representing the traffic staging grouped together in a separate section with the heading “Traffic management and temporary diversions” using level-of-effort type activities without an associated cost indicating on which section of the existing, new or temporary travelled roadway within the Lands traffic will be

traveling per direction of traffic where the first day of the activity represents the day on which the traffic is switched onto the section, and 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”); the section shall also include a level-of-effort activity representing each closed existing roadway or ramp within or outside the Lands where each of these activities representing a closure is linked to the associated activities to be completed during the closure (e.g. “Closed Interchange A Ramp N-EW”); the information shall be used in combination with the Traffic Management Plan to illustrate the intended traffic staging.

- (g) The following Works Activities and Works Milestones structured in such a way to clearly indicate Project Co’s overall approach, phasing and sequencing of the planning and execution of the Works:
- (i) Key Works Activities;
  - (ii) Primary Works Milestones;
  - (iii) Primary Works Activities; and
  - (iv) any other activities required by Project Co to fulfill the requirements of this Project Agreement.

## 12. REVISED BASELINE WORKS SCHEDULE

- 12.1. If Contracting Authority is of the opinion that, as a result of an amendment to the Project Agreement, a Delay Event, a Variation Confirmation, or a Variation Directive, the scope and/or schedule of the Works has changed significantly since the finalization of the Baseline Works Schedule, 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 Works Schedule, then Project Co shall prepare and submit a Revised Baseline Works Schedule (as a Works Submittal), no later than 15 Business Days after Project Co receives such Notice, for review pursuant to Schedule 10 – Review Procedure.
- 12.2. If Project Co is of the opinion that, as a result of an amendment to the Project Agreement, a Variation Confirmation, or a Variation Directive, the scope of the Works has changed significantly since the finalization of the Baseline Works Schedule, 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 shall determine whether a Revised Baseline Works Schedule is necessary or appropriate.
- 12.3. The Revised Baseline Works Schedule submitted by Project Co,

- (a) shall have the same requirements as those listed for the Baseline Works Schedule;
- (b) shall have activities which are Traceable to those that appeared in the Baseline Works Schedule;
- (c) shall identify all differences between the Baseline Works Schedule and the Revised Works Schedule; and
- (d) shall include a Data Date that is determined by Contracting Authority.

12.4. If the Revised Baseline Works Schedule is finalized pursuant to Section 4.2, the Revised Works Schedule shall replace the Baseline Works Schedule.

### 13. BASIS OF WORKS SCHEDULE REPORT

13.1. The Basis of Works Schedule Report shall be submitted with the draft of the Baseline Works Schedule and any subsequent update or revision of the Baseline Works Schedule.

13.2. Every Basis of Works Schedule Report shall include a black-lined version of the previous Basis of Works Schedule Report to clearly indicate the changes made from the previous version, and a clean version.

13.3. The Basis of Works Schedule Report shall at least include the following report sections and related content:

- (a) Cover page including the title “Basis of Works Schedule Report “, the Project title, date of the report, issuance date, version date, and the version number of the relevant Baseline Works Schedule, an applicable Recovery Works Schedule or Progress Works Schedule, and the Project Co Representative signature approving the Report;
- (b) “Section 1 – Project Description, Schedule Integration Process”, including a written narrative of a high-level description of the Project. Describe Project Phases and the inclusion of schedule input from subcontractors, vendors, third parties (such as Governmental Authorities and Utility Companies), and Contracting Authority. Provide a written narrative of the Project scope, in addition to the basis for defining the work breakdown structure (“WBS”). This section may also cover total quantities for key Project commodities, so Project progress can be better tracked;
- (c) “Section 2. Implementation strategy”, including a written narrative with sufficient details to describe the overall approach, proposed sequencing and work plan to complete the Works required to achieve Substantial Completion and Final Completion. For clarity, the first Basis of Works Schedule Report shall explain the basis of development of the schedule, the means and methods that Project Co plans to deploy in order to meet the project milestones and completion date requirements. This section shall include diagrams to clarify intent and shall be written to identify the strategy or approach to;

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- (i) complete any additional Site investigations and other due diligence;
  - (ii) complete the Design Development and review process;
  - (iii) obtain any required major Permits, Licences, Approvals and Agreements;
  - (iv) procurement strategy for suppliers and critical components of the Works; and
  - (v) testing and commissioning of the Works and Final Completion and Close-Out Activities, including asset handover and development of final As-Built Drawings and manuals;
- (d) “Section 3. Critical Path Analysis”, including the following:
- (i) “Critical Path risk”, describing in tabular form the risks to completing the Critical Path Activities (including Activity ID) to achieve Substantial Completion, and Project Co’s strategy to mitigate or avoid these risks;
  - (ii) overall project “Critical Path Activities” and “Near Critical Path Activities” that includes a Gantt Chart schedule that shows the Critical Path of the Project as well as near critical path activities. Near critical path activities shall be activities having less than 20 Working Days total float (“**Near Critical Path Activities**”); and
  - (iii) Longest path – provide programme layouts for the longest path and first ten float paths;
- (e) “Section 4. Works Schedule Structure and Logic”, including the following:
- (i) a narrative to explain how the WBS is organized and how activities are assigned to WBS level; and
  - (ii) a narrative and table to explain the Activity ID and naming convention;
- (f) “Section 5. Planned working calendar”, including a table defining each of the schedule calendars. For each calendar include the work days (days of the week), normal working hours, number and hours of any shifts, and a list of all assumed non-Working Days for any part of the Works (i.e. holidays, environmental restricted work windows, etc.);
- (g) “Section 6. Means and Methods”, including an executive summary of the intended means and methods for all construction, erection or installation related Works Activities of primary components for each of the Major Works Elements and include for each a short narrative on the type of work, any constructability issues and if the work will be self-performed by the Construction Contractor or sub-contracted;

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- (h) “Section 7. Procurement”, including a table defining list of procurement of major items and the lead time detailing fabrication and delivery to site;
- (i) “Section 8. Resource plan”, including:
- (i) Number of teams and team composition (i.e. manpower requirements) including subcontractor work;
  - (ii) Number and type of heavy machinery or equipment;
  - (iii) Anticipated resource constraints (such as Pandemic and Epidemic related constraints, union related constraints and limits to the number of any specific heavy machinery available in the region, etc.); and
  - (iv) A written narrative with sufficient details to demonstrate how Project Co intends to meet the Resource requirements;
- (j) “Section 9. Planned Production Rates”, including a table listing each Works Activity related to the construction, erection or installation of primary and secondary components for each of the Major Works Elements and for each indicate:
- (i) the assumed production rate for each activity expressed as a Quantity per Working Hours (i.e. units/hours, ton/hours, m/hours, m<sup>2</sup>/hours, or m<sup>3</sup>/hours) based on past experience and historical data; and
  - (ii) the intended schedule calendar or any variance to the normal Working Hours, such as “Restricted to night work” or “Mon to Sat, 3 x 8hr shifts”.
- For clarity, each Works Activity shall only be listed once in the table, even though more than one instance of the type of the Work is indicated in the Baseline Works Schedule unless more than one team or calendar configuration is intended. In case of multiple instances of same type of the Work that reflect different production rates, Project Co shall provide an explanation and assumption for each instance;
- (k) “Section 10. Pandemic and Epidemic response”, including a written narrative of no less than 1000 words:
- (i) describing Project Co’s plans and processes for addressing and implementing the COVID-19 Emergency Public Health Physical Distancing Requirements;
  - (ii) 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;

- (iii) 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:
  - (A) planned working calendar (Section 5 of Basis of Works Schedule Report);
  - (B) resource (workforce) plan;
  - (C) production rates; and
  - (D) constraints and restrictions (Section 12 of Basis of Works Schedule Report);
- (iv) outlining Project Co’s strategy to mitigate the effects described in Section 12.3 (k) (iii); and
- (v) how the processes described in Section 12.3 (k)(i) and (ii) will affect the Project Works Schedules;
- (l) “Section 11. General Assumptions”, including any other assumptions used by Project Co to generate the schedule including but not limited to any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, etc.
- (m) “Section 12. Constraints”, including a table of any imposed date constraints used or specific constraint for the review of each Design Development Submittal and Construction Document 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 approval by Contracting Authority permitting the constraint.
- (n) “Section 13. Planned Value Curve”, including a graphical and tabular representation of the cost loaded schedule showing the cost per month and the cumulative curve;
- (o) “Section 14. Key Commodities Curves” Project Co shall produce key commodity curves and submit. For clarity, horizontal axis shall show months whereas vertical axis shall demonstrate agreed units of measure. Details, numbers and method for measurement shall be agreed by both parties within common industry practices.

## 14. WORKS SCHEDULE PROGRESS REPORT

- 14.1. The Works Schedule Progress Report shall document the overall progress and schedule performance, the variances between Project Works Schedules where such variance is greater than five Working Days, and any related risks or issues.

- 14.2. The Works Schedule Progress Report shall at least include the following report sections and related content:
- (a) a cover page including the title “Works Schedule Progress Report “, the Project title, date of the report, issuance date, version date, and the version number of the relevant Baseline Works Schedule, Recovery Works Schedule or Progress Works Schedule, and the Project Co Representative signature approving the report;
  - (b) “Section 1. Executive Summary”, including a narrated executive summary on progress, any noteworthy milestones achieved or schedule variances, and issues or risks that has or may impact the schedule;
  - (c) “Section 2. Update to Project Description, Schedule Integration Process”, including a written narrative of a high-level description of changes to the Project scope and schedule integration. Identify changes to Project phases and the inclusion of schedule input from subcontractors, vendors, third parties (such as government agencies and utility companies), and Contracting Authority. Identify any changes to the WBS.
  - (d) “Section 3. Schedule analysis”, including at least:
    - (i) the forecast Substantial Completion Date and the Scheduled Substantial Completion date;
    - (ii) the terminal float calculated as the difference between the then current Scheduled Substantial Completion Date and the date of the Substantial Completion of the current Progress Works Schedule, expressed in calendar days;
    - (iii) a terminal float graph related to Section 14.2(d)(ii) showing the historically calculated terminal float values for each Month from Financial Close up to the applicable reporting period, including the terminal float for the applicable Progress Works Schedule;
    - (iv) an assessment and analysis of the risk of delay to the Baseline Works Schedule and the mitigation of such risks in a tabular form;
    - (v) the ratio of remaining Critical Path Activities and Near Critical Path Activities to total number of remaining activities, for clarity only task dependent activities should be included in the calculation;
    - (vi) the list of activities with no progress reported for the two subsequent months and each start and/or finish date equal to the Data Date, with a discrete explanation for the failure to start and/or finish; and,
    - (vii) the list of activities has been started but due to lack of progress remaining duration has not decreased within the two subsequent months, with the



discrete explanation for circumstances and reasons for failure to finish and/or progress.

- (e) “Section 4. Critical Path Analysis” that includes the following information:
- (i) Critical Path Risk; describing in tabular form the risks to complete the Critical Path Activities (including Activity ID) to achieve Substantial Completion, affected area, and Project Co’s strategy to mitigate or avoid these risks;
  - (ii) overall project Critical Path and Near Critical Path Activities that includes a Gantt Chart schedule that shows the Critical Path as well as Near Critical Path Activities;
  - (iii) actual progress against baseline target dates for each Critical Path Activity or Near Critical Path Activity;
  - (iv) any activities that were deemed Critical Path Activities or Near Critical Path Activities in the previous submission of a Proposed Works Schedule, Interim Baseline Works Schedule, Baseline Works Schedule, or Progress Works Schedule, as applicable, and have consumed a minimum of five Working Days total float since then;
  - (v) any Critical Path Activities or Near Critical Path Activities and/or milestones that are more than 20 Working Days behind schedule, relative to the Baseline Works Schedule;
  - (vi) any Critical Path Activities or Near Critical Path Activities and/or milestones that are more than five Working Days behind schedule relative to the immediate previous Progress Works Schedule;
  - (vii) a narrative that describes the changes in the Critical Path Activities or Near Critical Path Activities from the previous month;
  - (viii) a list of all Works Activities that have become Near Critical Path Activities during the last reporting period;
  - (ix) a list of all Works Activities that are Near Critical Path Activities that were forecasted in the immediately previous Progress Works Schedule, to start or finish in the current reporting period. Provide the reason for any of those activities that have not started or finished; and
  - (x) provisions for addressing the behind-schedule Critical Path Activities or Near Critical Path Activities such that Substantial Completion will occur on the Scheduled Substantial Completion Date;

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- (xi) a table entitled “Milestone and Critical Path Variances” listing all Works Milestones and all Critical Path Activities and, for each Works Milestone and Critical Path Activity where the variance exceeds five Working Days from the immediately previous Progress Works Schedule, the following information:
- (A) the Activity ID or milestone identification number and name;
  - (B) the “baseline Start and Finish Dates” in accordance with the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule or each Recovery Works Schedule, as applicable;
  - (C) the “planned Start and Finish Dates” set out in the immediately previous Progress Works Schedule;
  - (D) the “forecast Start and Finish Dates”, or, if applicable, the “Actual Start and Finish Dates”, as set out in the associated Progress Works Schedule and a clear identification of any Works Milestones to be achieved by Project Co in the next 12 week period;
  - (E) the physical percentage completion, or status;
  - (F) “Total Variance” expressed in Working Days, calculated as a difference of forecast Finish Date from the current Progress Works Schedule and the Finish Date from the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule, as applicable;
  - (G) the “Reporting Period Variance” calculated as the forecast Finish date from the current Progress Works Schedule minus the Finish date from the immediately previous Progress Works Schedule, expressed in Working Days; and
- (xii) a brief narrative on any actual or forecasted delays or issues that might have an impact on the scheduled completion dates of the Works in the Progress Works Schedule and a discussion of the measures being (or to be) adopted by Project Co to overcome them;
- (xiii) Longest Path provide:
- (A) P6 layout for the Longest Path
  - (B) P6 layout for first ten float paths, and
  - (C) a narrative that describes the changes in the Longest Path activities from the previous month,

extracted from the Current Progress Works Schedule;

- (f) “Section 5. Change Log” including:
- (i) a narrative explaining the basis for any required changes to the sequencing of the Works, interdependencies, or original activity durations as set out in the Baseline Works Schedule or current Recovery Works Schedule, as applicable, which changes, for clarity, shall be incorporated into the Progress Works Schedule; and
  - (ii) Project Co shall create and maintain a change log register (the “**Change Log**”) detailing all changes made between an immediately previous Progress Works Schedule and the Baseline Works Schedule or revised Baseline Works Schedule, including any of the following changes:
    - (A) addition, deletion or changes to activity relationships;
    - (B) addition, deletion or changes to the project calendars;
    - (C) addition or deletion of Works Activities or Works Milestones or changing the description of activities;
    - (D) changes to Works Activity durations;
    - (E) changes to Works Activity assigned cost value;
    - (F) Changes or release of schedule constraints, and if so, what constraints were removed;
    - (G) changes to Works Activity assigned Quantities;
    - (H) changes to the assigned calendar determining the Working Days for the Works Activity; and
    - (I) any other change that impacts the logic of the schedule,and for each change Project Co shall provide:
    - (J) 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;
    - (K) the activity or milestone identification number and name;
    - (L) any changes to Primavera P6 scheduling options and settings

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- (M) the type of change:
- i. a discrete explanation for circumstances and reasons leading to the change. Project Co shall not provide a general blanket explanation, for example similar to “change in strategy” or “according to recent market conditions,” but shall diligently explain in detail the strategy change or the specific conditions that led to that change; a description of the change including the previous configuration or value, and the updated configuration or value, and
  - ii. the updated Change Log shall be included with each Project Works Schedule submission and shall be finalized or considered an acceptable Change Log to Contracting Authority until it has received a No Comment or Minor Non-Conformance Designation.
- (g) “Section 6. Progress Performance Management” including:
- (i) a report, in the form set out in Appendix B – EVM Reporting Requirements, of each of the following in tabular and graphical form:
  - (ii) S-Curve showing Planned Value vs. Earned Value;
  - (iii) Schedule Performance Index “SPI” trend over time;
  - (iv) a Variance Analysis Report,  
  
(collectively, the “**Earned Value Metrics**”) in accordance with the Project Management Institute’s Practice Standard for Earned Value Measurement – Second Edition; and
  - (v) a report of each of the Earned Value Metrics,
    - (A) for the entire Project; and
    - (B) for each Asset Category Breakdown
  - (vi) 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 % complete of the following (to clarify, Contracting Authority may ask for further level of detail if needed. Eg. Construction progress at certain location or engineering for specific discipline):
    - (A) overall progress;

- (B) engineering (including Design Development Submittals, Review Procedures, project management, PLAA Activities, general items);
  - (C) procurement (long lead items, fabrication, delivery); and
  - (D) construction (mobilization, construction, installation, testing and commissioning);
- (h) “Section 7. Potential Delay Events” including a register of all potential Delay Events pursuant to Section 31.2(a) of the Project Agreement and for each a short description, the date on which the notice required pursuant to Section 31.2(b) and 31.2(c) of the Project Agreement was provided to Contracting Authority, the mitigation strategy implemented by Project Co, and the current status;
- (i) “Section 8. Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register pursuant to Schedule 10;
- (j) “Section 9. “Progressed Key Commodities Curves” which demonstrate actual progress against key commodity curves submitted as per Section 13.3(p). 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 reasonings for shortcomings and deviations from the original plan.
- (k) “Section 10. “Actual Production Rates” including a table listing each type of Work and indicating for each:
- (i) actual Quantity and unit of measure for each type of Work
  - (ii) 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);
  - (iii) In case of multiple instances of same work type that reflect different production rates, Project Co shall provide an explanation and assumption for each instance;
- To clarify, this section is progressed metrics of production rates provided in the Basis of Works Schedule Report.
- (l) “Section 11. “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;
- (m) “Section 12. Progress Photos”, including the type, format and extent of the photos as agreed to by Contracting Authority in advance of the reporting period; and

- (n) any other information specifically requested by Contracting Authority on the progress of the Works.

## 15. PROGRESS WORKS SCHEDULES

### 15.1. Progress Works Schedule Validity

- (a) If, in the opinion of Contracting Authority, any Progress Works Schedule does not meet the requirements of the Project Agreement, or the actual progress of the Works on or off the Site, an actual start date, or an actual finish date does not correspond to the information indicated in the Progress Works Schedule for the applicable time period, then the Progress Works Schedule shall be deemed null and void, shall not be relied upon, and Project Co shall submit a revised version of the Progress Works Schedule for review to Contracting Authority within five Business Days of receiving Contracting Authority's written notice of same, which written notice shall include full details of the defects in the Progress Works Schedule rendering it null and void.
- (b) Starting on the first month after Financial Close until Final Completion, no later than 15 Business Days after the last day of each month, Project Co shall submit to Contracting Authority an updated Progress Works Schedule for review by Contracting Authority in accordance with Schedule 10 – Review Procedure. For clarity, the submission of any Progress Works Schedule shall not amend either the Proposed Works Schedule or the Baseline Works Schedule.

### 15.2. Progress Works Schedule Content

- (a) The Progress Works Schedule shall include, at a minimum, the following elements:
  - (i) the title “Progress Works Schedule” in the title block;
  - (ii) all elements required to be included in the Baseline Works Schedule;
  - (iii) the current progress of the Works pursuant to Section 5.8(a);
  - (iv) have activities that are progressed from and Traceable to those that appeared in the Proposed Works Schedule, the Baseline Works Schedule or the Revised Baseline Works Schedule, as applicable, and the immediately preceding Progress Works Schedule;
  - (v) have a Data Date which is the last day of the month to which the Progress Works Schedule applies unless otherwise agreed to between Contracting Authority and Project Co;
  - (vi) document the progress of the Works for all Works Activities and Works Milestones (via three distinct sets of activity bars) and progressed up to the end of the relevant month, measured relative to the Baseline Works

Schedule and the Progress Works Schedule of the previously reported month; to clarify, activity bars are as follows:

- A. Current Bar (updated to month-end)
  - B. Progress Works Schedule of the previously reported month
  - C. Baseline Works Schedule (approved Baseline)
- (vii) updated forecast dates required to complete the Works for all previously noted Works Activities and Works Milestones;
- (viii) additional milestones or activities that are requested by Contracting Authority;
- (ix) the Baseline Works Schedule (or current Recovery Works Schedule, or Revised Baseline Works Schedule, as applicable) baseline shown in the schedule using the scheduling software’s baseline functionality to visually indicate the variance between the Baseline Works Schedule (or current Recovery Works Schedule, or Revised Baseline Works Schedule, as applicable) and the actual dates for all past or ongoing activities and milestones and the new forecast dates for all future activities and milestones as indicated in the Progress Works Schedule. For clarity, each activity shall be shown with two bars, the baseline bar and the actual or forecast bar in a format agreed to with Contracting Authority; and
- (x) the implementation of each Variation Confirmation through which the addition of scope of Works is confirmed. For clarity, all Variations resulting in additional scope of Works shall be listed in the Progress Works Schedule as separate activities grouped together under the heading “Variations”, the activity name shall start with “VC-“ followed by the Variation Confirmation number and a short description;
- (b) the recovery plan to mitigate any delays; and
- (c) potential Delay Events pursuant to Section 31.1(a) of the Project Agreement for which the notice required pursuant to Section 31.2(b) and 31.2(d) of the Project Agreement was provided to Contracting Authority. Project Co shall show the duration of the event, the impact to any of the related Works Activities and the mitigation measures to be implemented by Project Co. Project Co shall include the full details of the event in the Works Schedule Progress Report pursuant to Section 14.

## 16. LOOK-AHEAD SCHEDULE REQUIREMENTS

### 16.1. Look-Ahead Schedule Validity

- (a) Project Co shall ensure that Works Milestone dates and the Works Activity dates and durations indicated on the Current Look-ahead Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the Current Progress Works Schedule for any specific period. If any of these Work Milestone or Works Activity dates do not correspond with the Current Progress Works Schedule, or the Current Progress Works Schedule does not comply with the requirements of the Project Agreement, as validated using the Project Works Schedule Checklist attached as Appendix F, the Current Look-ahead Schedule shall be deemed null and void and shall not be relied upon, and Project Co shall either:
- (i) revise the Current Look-ahead Schedule and submit the revised version to Contracting Authority; or
  - (ii) generate a new version of the Progress Works Schedule indicating the correct Works Milestone and Works Activity dates and durations,

within five Business Days of becoming aware of the discrepancy.

- (b) The Current Look-ahead Schedule shall also be deemed null and void, and shall not be relied upon to define the Contracting Authority Review Period to process Works Submittals pursuant to Schedule 10 – Review Procedure, if:
- (i) the actual sequencing logic and submission dates for the Review Procedure Activities and the scheduled Review Procedure Activities included in the Current Look-ahead Schedule does not conform to the requirements of Section 8; or
  - (ii) if the Current Look-ahead Schedule is deemed null and void pursuant to Section 16.1(a),

in which case, the Contracting Authority Representative shall provide Project Co with an estimate of the time necessary for processing such Works Submittals pursuant to Section 2.3 of Schedule 10 – Review Procedure, which estimate Project Co shall take into account for the purposes of Section 8.5.

- (c) Look-Ahead Schedule Activities shall be an amplification of and be compatible with the Progress Works Schedule. That is, each activity in the Look-Ahead Schedule includes the Activity ID. One activity in the Progress Works Schedule may be represented in detail by more than one (1) activity in the Look-Ahead Schedule.

## 16.2. Look-ahead Schedule Content

- (a) The Look-ahead Schedule shall at least include the following elements:
- (i) the title “Look-ahead Schedule” and the date range for which the Look-ahead Schedule is applicable in the title block;



- (ii) all elements required to be included in the Progress Works Schedule;
- (iii) Secondary Works Milestones;
- (iv) Secondary Works Activities;
- (v) in the section titled “Review Procedure”, expand each summary activity created for the Baseline Works Schedule to include a separate activity for each Design Development Activity and each Review Procedure Activity for each Works Submittal, and for each clearly indicating the specific Works Submittal number;
- (vi) the implementation of each Variation confirmed by a Variation Confirmation to a greater level of detail than indicated in the Progress Works Schedule, where each of the activities related to a Variation Confirmation in the Progress Works Schedule shall act a “hammock” for these activities; and
- (vii) in a separate section titled “Non-Conformances”, all activities on site required to rectify Major Non-Conformances and Critical Non-Conformances, the name of each of these activities shall be “NCR-“ followed by the relevant Non-Conformance number and a short description.

## 17. WORKS AREA MICRO-SCHEDULE REQUIREMENTS

### 17.1. Works Area Micro-Schedule Validity

- (a) Project Co shall ensure that Works Milestone dates and the Works Activity dates and durations indicated on the Works Area Micro-Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the Current Progress Works Schedule for any specific period. If any of these Works Milestone or Works Activity dates do not correspond with the Current Progress Works Schedule the Works Area Micro-Schedule shall be deemed null and void and shall not be relied upon, and Project Co shall either:
  - (i) revise the Works Area Micro-Schedule and submit the revised version to Contracting Authority; or
  - (ii) generate a new version of the Progress Works Schedule indicating the correct Works Milestone and Works Activity dates and durations,

within five Business Days after becoming aware of the discrepancy.

- 17.2. Upon Contracting Authority’s request, Project Co shall provide a drawing of the affected Works areas, which is marked up to illustrate the sequence and timing of the construction activities depicted within any Works Area Micro-Schedule.

- 17.3. Project Co may request, for consideration by Contracting Authority, that Project Co be permitted to provide a Works Area Works Micro-Schedule in Excel or MS Project format.
- 17.4. Works Area Micro Schedule Activities shall be an amplification of and compatible with the Progress Works Schedule. That is, each activity in the Works Area Micro Works Schedule includes the Activity ID of its corresponding activity in the Progress Works Schedule. One activity in the Progress Works Schedule may be represented in detail by more than one (1) activity in the Works Micro Schedule.
- 17.5. The Works Area Micro-Schedule shall include at minimum the following elements which shall be limited to the specific area or element of the Works related to that Works Area Micro-Schedule:
- (a) the title “Works Area Micro-Schedule”, a descriptor of the area of Works for which the schedule is applicable, and the date range for which the Look-ahead Schedule is applicable in the title block;
  - (b) the information of the originally agreed Works Area Micro-Schedule for the specific area or element of Works shown in the schedule using the scheduling software’s baseline functionality to visually indicate the variance between the agreed Works Area Micro-Schedule and the actual dates for all past or ongoing activities and milestones and the new forecast dates for all future activities and milestones indicated in any update of the Works Area Micro-Schedule. For clarity, each activity shall be shown with two bars, the baseline bar and the actual or forecast bar in a format agreed to with Contracting Authority, the first version of the schedule shall therefore have two bars per activity indicating the same timeframe, and each of the actual and forecast dates shall correspond with Current Progress Works Schedule;
  - (c) all elements required to be included in the Progress Works Schedule;
  - (d) all elements required to be included in the Look-ahead Schedule;
  - (e) Micro-Schedule Works Milestones;
  - (f) Micro-Schedule Works Activities; and
  - (g) a Data Date that is determined by Contracting Authority.

**APPENDIX A**

**PROJECT WORKS SCHEDULE TECHNICAL REQUIREMENTS**

[REDACTED]

**APPENDIX B**

**PROJECT WORKS SCHEDULE EVM REPORTING REQUIREMENTS**

[REDACTED]

**APPENDIX C**

**ACTIVITY CODE AND USER DEFINED FIELDS (UDF) REQUIREMENTS**

[REDACTED]

**APPENDIX D**

**MAJOR WORKS ELEMENTS AND PRIMARY AND SECONDARY COMPONENTS**

[REDACTED]

**APPENDIX E**

**PROPOSED WORKS SCHEDULE AND INTERIM WORKS SCHEDULE**

[REDACTED]

**APPENDIX F**

**PROJECT WORKS SCHEDULE CHECKLIST**

[REDACTED]



**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

[REDACTED]

**SCHEDULE 14**

**OUTLINE COMMISSIONING AND COMPLETION REQUIREMENTS**

[REDACTED]

**SCHEDULE 15**

**OUTPUT SPECIFICATIONS**

[REDACTED]

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**SCHEDULE 16****TITLE ENCUMBRANCES**

For purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.

***General Title Encumbrances***

Any of the following in existence as of Commercial Close:

1. Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Contracting Authority.
2. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to 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.
3. The rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision.
4. Any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including without limitation, reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
5. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, and federal, provincial or municipal by-laws and regulations.
6. 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.
7. Servitudes, easements, rights-of-way, or other similar rights in land for sewers, electric lines, telegraphs and telephone lines and other utilities and services which do not materially impair the value of the Lands or materially interfere with the use of the Lands for the purposes of the Project.
8. Minor encroachments onto or from neighbouring lands which are permitted under agreements with the owners of such lands and which do not materially impair the value of the Lands or materially interfere with the use of the Lands for the purposes of the Project.

9. Registered subdivision, site-plan, development or other municipal agreements, if any, provided such are complied with and which do not materially impair the value of the Lands or materially interfere with the use of the Lands for the purpose of the Project.
10. The exceptions and qualifications contained in subsection 44(1) of the *Land Titles Act* (Ontario) except for paragraphs 11 and 14, Provincial Succession Duties and Escheats or Forfeiture to the Crown and the rights of any person who would, but for the *Land Titles Act* (Ontario), be entitled to the land or any part of it through length of adverse possession, prescription, misdescription, or boundaries settled by convention.
11. Requirements under all Applicable Law relating to a King's Highway in Ontario.
12. The Project Agreement, any Ancillary Documents and other agreements relating thereto approved or agreed to by Project Co or entered into pursuant to the Project Agreement, and any interests thereunder.
13. Any rights in favour of or accruing to holders of under-surface rights which could be ascertained by a review of registered title or other public records, or which do not materially interfere with the use of the Lands for the purposes of the Works.
14. Agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such agreements have been complied with or if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
15. Unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been complied with or if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
16. Easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein which do not materially interfere with the use of the Lands for the purposes of the Works.
17. Minor imperfections of title.
18. Statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision.
19. 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.
20. The rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

Title Encumbrances shall also include any Encumbrances or other matters described in paragraphs 5, 6, 8-10, 13, 15 and 16 above, which arise after Commercial Close, in each case, provided that they do not materially interfere with the use of the Lands for the purposes of the Works.

Title Encumbrances shall also include any Encumbrances or other matters described in paragraphs 1-4, 7, 11 and 14, which arise after Commercial Close.

***Specific Title Encumbrances***

1. All Encumbrances relating to the title to the Lands disclosed or noted on the land registry office parcel registers or abstract indices for the Lands from time to time, including those Encumbrances included in the Background Information as of Commercial Close and including those Encumbrances referred to in the legal descriptions for the Lands available in the applicable land registry office, in each case as assigned, amended, extended, supplemented, substituted and replaced from time to time. Notwithstanding the preceding sentence, any Encumbrances referred to in that sentence which are registered after Commercial Close will not be Title Encumbrances if they:
  1. materially interfere with the use of the Lands for the purposes of the Works;
  2. have not been consented to by Contracting Authority; or
  3. are Encumbrances which Project Co is obliged to remove, vacate or discharge under the Project Agreement.

**SCHEDULE 17**

**ENVIRONMENTAL OBLIGATIONS**

**[REDACTED]**

**SCHEDULE 18****COMMUNICATIONS****1 DEFINITIONS**

**1.1** In this Schedule 18, unless the context otherwise requires:

- (a) “**Communications Director**” means an individual who possesses the following minimum requirements:
- (i) minimum of 8 years of communications experience in a key role that shaped the success of large construction/infrastructure projects;
  - (ii) extensive experience planning, developing and implementing strategic and integrated communications plans for large construction/infrastructure projects and experience working with multiple stakeholders with competing interests;
  - (iii) demonstrated ability to work effectively with public and private sector partners and to effectively build relationships with various professional associations and stakeholders;
  - (iv) experience planning and organizing outreach meetings, forums, public information centres, and tours and events;
  - (v) proven ability to liaise with the public, drivers, emergency services, Governmental Authorities and other stakeholders on contentious issues by finding the opportunities and solutions to effectively respond and proactively manage issues, and bring the matter to a conclusion in a timely manner;
  - (vi) experience drafting and editing a wide range of construction/infrastructure project related materials, including press releases, media response, statements, Notices, and event plans; and
  - (vii) experience with and understanding of working with elected officials and various levels of government,

and who may also possess the following desirable qualities:

- (viii) An APR designation (Accredited Public Relations) offered by the Canadian Public Relations Society (cprs.ca) or equivalent ABC (Accredited Business Communicator) offered by the International Association of Business Communicators (iabc.com); and
- (ix) knowledge of Canadian Press style and Ontario style guidelines.



- (b) **“Communications Plan”** or **“CP”** has the meaning given in Section 2.6, Appendix A and Appendix B of this Schedule 18;
- (c) **“Crisis Communications Plan”** or **“CCP”** has the meaning given in Section 2.8 and Appendix D of this Schedule 18;
- (d) **“Communications Roll Out Plan”** has the meaning given in Section 2.3(c) of this Schedule 18;
- (e) **“Communications Working Group”** or **“CWG”** has the meaning given in Section 2.4(a) of this Schedule 18;
- (f) **“Communications Works Submittals”** means the submittals set out in Section 2.10 of this Schedule 18.
- (g) **“Governmental Authority Communications Meetings”** or **“GACM”** has the meaning given in Section 2.5 of this Schedule 18;
- (h) **“Look Ahead Schedule”** has the meaning given in Schedule 12 – Works Schedule Requirements.
- (i) **“Public Communications”** include, without limitation, activities and deliverables associated with crisis communications, issues management, responding to inquiries, public relations, media relations, tours and events, Notices, newsletters, email blasts, Traffic Disruption Notices, website, signage and displays, advertisements, marketing and identity/graphic design;
- (j) **“Response Log”** means the response log described in Section 2.7(c) of this Schedule 18;
- (k) **“Response Protocol”** has the meaning given in Section 2.7(a) and Appendix C of this Schedule 18;
- (l) **“Service Standards”** has the meaning given in Appendix A of this Schedule 18; and
- (m) **“Traffic Disruption Notice”** or **“TDN”** has the meaning given in Section 2.9 of this Schedule 18.

## 2 GENERAL

### 2.1 Reference Documents

- (a) Project Co shall ensure that all Public Communications, at all times during the Project Term, comply with each of the following reference documents, in a manner such that if there is any conflict between criteria, commitments or requirements

contained within one document when compared with another, the more stringent shall apply:

- (i) *Accessibility for Ontarians with Disabilities Act*; and
- (ii) *Personal Information Protection and Electronic Documents Act (PIPEDA)*.

## 2.2 Communications Principles

- (a) The Project represents an important infrastructure commitment by the Province. Accordingly, during the Project Term, comprehensive communications and public relation activities in relation to the Project are required to ensure the public, drivers, emergency services, Governmental Authorities and other stakeholders are educated, informed and engaged where necessary and to ensure the Contracting Authority's communications objectives are met. The requirements set out in this Schedule 18 are intended to support the effective exchange of ideas between Project Co and Contracting Authority, with respect to notifying, updating and engaging the public, drivers, emergency services, Governmental Authorities and other stakeholders.
- (b) Project Co shall work with the Contracting Authority in fulfilling the Contracting Authorities communications and public relations objectives which include, without limitation:
  - (i) conveying advance and real time notification and messages to the public (i.e., community residents, businesses, farmers, active transportation groups/users and developers), drivers (i.e. commuters, commercial truckers, tourists, RV associations, bussing companies and transit authorities), emergency services, Governmental Authorities and other stakeholders of potential traffic and/or transit changes or impacts;
  - (ii) open, transparent, effective and proactive exchanges of information with the public, drivers, emergency services, Governmental Authorities and other stakeholders; and
  - (iii) the development and implementation of Communications Plan(s) which create a positive image of the Project, Project Co, and the Contracting Authority.
- (c) The following set of guiding principles will be the foundation of all Public Communications activities undertaken by Project Co:
  - (i) Customer focused – Serving the needs of the public, drivers, emergency services, Governmental Authorities and other stakeholders (i.e. placing customers' satisfaction first). Public Communications activities must be customized and focused on drivers (i.e. emergency services, commuters, commercial truckers, tourists, RV associations, bussing and transit

- authorities) as well as the public (i.e. community residents, businesses, farmers, active transportation groups/users and developers);
- (ii) Relevant/Pertinent – The timing, content, tone, style and method of communication can impact decisions and/or outcomes. Consideration must be given to ensure that all Public Communications materials are developed thoughtfully to ensure that they are effective in delivering the appropriate messages to the public, drivers, emergency services, Governmental Authorities and other stakeholders;
  - (iii) Responsive – Need to react quickly and positively with interest and enthusiasm to all requests, queries, and complaints from the public, drivers, emergency services, Governmental Authorities and other stakeholders. The Service Standards for Public Communications outlined in Appendix A of this Schedule 18 are a minimum; however, based on the Response Protocol to be developed, it is necessary to ensure:
    - A. timely and fulsome responses to all questions, requests, and concerns;
    - B. all input is given consideration and responses are provided on how input has been incorporated, or why such input was not incorporated; and
    - C. all reasonable efforts are made to resolve issues and concerns as they arise; and
  - (iv) Proactive – Planning for potential problems, solving problems instead of dwelling on them, prioritizing effectively, and assessing methods of tackling tasks to make improvements will ensure the successful delivery of Public Communications and traffic management.
- (d) This Schedule 18 shall be adhered to in developing all materials including, without limitation, all print and electronic communications related to, design, construction, milestones, municipal and community relations, signage and displays, media responses, website information, branded products, responses, and Environmental Assessment Submittals in accordance with Schedule 17 – Environmental Obligations.
- (e) All Public Communications from Project Co shall be deemed communications from Contracting Authority for the purposes of the *Accessibility for Ontarians with Disabilities Act* and Applicable Law, and therefore must comply with the requirements therein.

### 2.3 General Communications

- (a) Project Co shall obtain the Contracting Authority’s approval of all advertisements, news releases, Notices, newsletters, email blasts, website postings and updates, and community letters prior to distribution or release, whether issued by Project Co or on behalf of Project Co.
- (b) Project Co shall provide final documentation (i.e., content and design layout) of advertisements, news releases, Notices, newsletters, email blasts, website postings and updates, and community letters, to the Contracting Authority’s communications representative, in accordance with Section 2.10 of this Schedule 18.
- (c) Project Co shall develop a Communications Roll Out Plan (the “**Communications Roll Out Plan**”) in accordance with Section 2.10 of this Schedule 18 and for each advertisement, news release, Notice, newsletter, email blast, website posting or update, and community letter. The Communications Roll Out Plans shall include, without limitation:
  - (i) the information that is to be communicated and the rationale for including such information;
  - (ii) the delivery method, for example newspapers and dates of publication, website(s), Canada Post with a defined radius of the Project, municipal and community bulletin boards (include the location), email blasts, etc.;
  - (iii) the intended recipients of the communications including, but not limited to, all names and email addresses for MPs, MPPs, Municipal Clerks, stakeholder lists; regulatory agencies, Indigenous communities;
  - (iv) the timeline for communications; and
  - (v) a list of questions and answers commonly asked about the Project and pertaining to the topic or matter being communicated.
- (d) As set forth in Section 2.10, documents shall be submitted to the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure with the approvals and signoff from the Communications Director.

## 2.4 Communications Working Group

- (a) Project Co shall provide qualified staff, including but not limited to the Communications Director, the Traffic Manager, the Design Manager, and the Environmental Manager as required and shall establish a Communications Working Group (the “**Communications Working Group**” or “**CWG**”) as a forum where Project Co and Contracting Authority can discuss the Project in an open, collaborative setting.

- 
- (b) The CWG shall meet monthly, or more frequently if requested by either Party, starting no later than forty (40) Business Days following Financial Close until Final Completion, or as otherwise agreed to by the Contracting Authority Representative, to discuss communications and public relations strategies, share information, provide community relations updates, identify and plan for communications and milestones, address and manage new and emerging issues, and to be updated about the progress of design and construction.
- (c) At CWG meetings, Project Co shall report on:
- (i) Public Communications activities and strategies including anticipated timing, emerging trends, and Project Co’s approach to refining the CP so as to mitigate concerns;
  - (ii) the Look-Ahead Schedule;
  - (iii) additions to Project Co’s Response Log summarizing all inquiries, comments and complaints and the responses issued by Project Co in tabular form since the previous CWG; and
  - (iv) status of Works Submittals and the Communications Works Submittals as outlined in Section 2.10.
- (d) The CWG shall act in an advisory capacity as it relates to the Project with a mandate to:
- (i) provide a balanced, inclusive discussion and forum;
  - (ii) serve as a formal mechanism to exchange ideas and concerns regarding any matter associated with this Schedule 18;
  - (iii) ensure the public (including the community residents, businesses, farmers, active transportation groups/users and developers) as well as drivers (being commuters, commercial truckers and associations, tourists, RV associations, bussing companies, and transit authorities), emergency services, Governmental Authorities, and other stakeholders receive customized, focused and relevant communications by discussing strategies, tactics, protocols, and principles;
  - (iv) support and coordinate with the Environmental Working Group (EWG) to meet the consultation requirements set out in the Environmental Approvals and Schedule 17 – Environmental Obligations; and
  - (v) operate through the design and construction of the Project.
- (e) Where necessary and appropriate, and as agreed to with the Contracting Authority Representative, CWG meetings may be utilized as workshopping opportunities to

review the status of and recommended refinements to Project Co's Communications Work Submittals.

- (f) Project Co shall chair and provide secretariat services for the CWG, including, without limitation:
  - (i) preparation and dissemination of the agenda, meeting materials and meeting minutes with recorded actions items, at least five (5) Business Days prior to CWG meetings;
  - (ii) preparation and maintenance of an action item log to track status and progress of action items, which is to be updated after each CWG meeting and form part of the meeting minutes; and
  - (iii) preparation of draft minutes approved by the chair and which are to be distributed no later than five (5) Business Days following CWG meetings and for review and approval at the subsequent CWG meeting.
- (g) Project Co shall retain and maintain final CWG meeting agendas, minutes and meeting materials, as presented at the meeting, in electronic format on the Contracting Authority's designated record keeping system and shall comply with Schedule 26 – Record Provisions.

## 2.5 Governmental Authority Communications Meetings

- (a) Project Co shall provide qualified staff, including but not limited to the Communications Director, and shall establish Governmental Authority Communications Meetings (“**the Governmental Authority Communications Meetings**” or “**GACM**”) as a forum to develop working relationships and protocols through which to: (i) share communication tactics and strategies; (ii) collaborate on ideas and opportunities; (iii) identify existing communication outlets; (iv) provide community relations updates; and (v) discuss trends and emerging issues.
- (b) The GACM shall meet quarterly, starting no later than sixty (60) Business Days following Financial Close, until Final Completion, or as otherwise agreed to by the Parties with the exception of emergency services, which shall meet monthly or as requested by emergency services.
- (c) Membership of GACM should include a communication staff representative from Governmental Authorities, including but not limited to County of Essex, Township of Kingsville, Municipality of Leamington, Town of Essex, and regional and municipal transit authorities, bussing companies, including those companies providing school bussing services, and emergency services.
- (d) The purpose of the Governmental Authority Communications Meetings is to:

- (i) disseminate information to ensure consistent messaging is available for each Governmental Authority;
  - (ii) create a positive, constructive, working relationship by providing for timely, open, transparent, effective, consistent and pro-active communications with the Governmental Authorities; and
  - (iii) build trust and maximize understanding and support for the Project.
- (e) At each Governmental Authority Communications Meeting, Project Co shall be prepared to report and receive input on:
- (i) Public Communications activities and strategies; and
  - (ii) progress of the design, Environmental Approvals, construction and traffic management measures, including detours, signage, and road closures.
- (f) Project Co shall chair and provide secretariat services for Governmental Authority Communications Meetings, including, without limitation:
- (i) preparation and dissemination of the agenda, meeting materials and meeting minutes with recorded actions items, at least five (5) Business Days prior to Governmental Authority Communications Meetings;
  - (ii) preparation and maintenance of an action item log to track status and progress of action items, which is to be updated after each Governmental Authority Communications Meeting and form part of the meeting minutes; and
  - (iii) preparation of draft minutes approved by the chair and which are to be distributed no later than five (5) Business Days following Governmental Authority Communications Meetings and for review and approval at the subsequent Governmental Authority Communications Meeting.
- (g) Project Co shall retain and maintain final Governmental Authority Communications Meeting agendas, minutes and associated meeting materials in electronic format on the Contracting Authority's designated record keeping system and shall comply with Schedule 26 – Record Provisions.

## 2.6 The Communications Plan

- (a) No later than ten (10) Business Days following Financial Close Project Co shall prepare and submit, pursuant to Schedule 10 - Review Procedure a comprehensive Communications Plan (the “**Communications Plan**”) that supports Project Co's obligations under this Project Agreement including, for greater certainty, Project Co's obligations as specified in this Schedule 18 and Project Co's consultation obligations and reporting requirements in connection with Schedule 17 – Environmental Obligations.

- (b) The Communications Plan shall include, without limitation:
- (i) a definition of the vision, goals, and values that form the cornerstone of Project Co’s communications tactics and strategy;
  - (ii) a description of Project Co’s communications team including an outline of the roles and responsibilities for each member and all third party contacts;
  - (iii) details regarding the quality assurance processes that Project Co will follow and which shall be in accordance with Schedule 11 – Quality Management to ensure accurate, high quality, consistent Public Communications;
  - (iv) a summary of past media coverage and public opinion about the Project and potential concerns or issues;
  - (v) research, analysis, and details associated with determining who to target, when, with what message and how;
  - (vi) details of the communications tools to be used, including without limitation, project office, dedicated toll-free telephone line(s), tour and event plans, website, media training, signage, traffic management, and electronic mediums for the recording, copying, broadcasting or display of moving and static visual mediums such as video and photography;
  - (vii) a description of Project Co’s approach to providing submissions to the “Ontario511 Traveler Information” website or the appropriate equivalent reporting mechanism on a weekly basis or as otherwise required by the Contracting Authority;
  - (viii) an explanation of how the Traffic Management Communications Plan requirements in Schedule 15-2 and Schedule 11 (i.e. the IQAF checking that lane closures are submitted in accordance with the Project Agreement whenever lane restrictions will be in place either on a permanent or temporary basis) are integrated into the overall Communications Plan;
  - (ix) an explanation of how the environmental and consultation requirements in Schedule 17 – Environmental Obligations are integrated into the overall Communications Plan including Project Co’s approach to Indigenous consultation, recognizing that Indigenous consultation will be led by the Contracting Authority, including a description of what the Contracting Authority’s Indigenous consultation commitments are and how Project Co will provide support;
  - (x) a description of Project Co’s methods of obtaining feedback on Public Communications materials and messaging to understand if communication strategies are delivering information clearly; and



- (xi) a description of the key emergency contacts that are available via phone /email all the time (i.e. on a 24 hour, seven days a week basis) in case of emergencies and or crises.
- (c) Additional requirements for the Communications Plan are detailed in Appendix A of this Schedule 18.
- (d) The structure of the Communications Plan should follow the framework detailed in Appendix B of this Schedule 18.
- (e) The Communications Plan shall be updated annually in the month of February of each year for each subsequent submission during the Project Term in accordance with Section 2.10 of this Schedule 18 and submitted for review pursuant to Schedule 10 – Review Procedure.

## 2.7 The Response Protocol

- (a) No later than ten (10) Business Days following Financial Close Project Co shall prepare and submit, pursuant to Schedule 10 - Review Procedure a comprehensive Response Protocol (the “**Response Protocol**”) that supports Project Co’s obligations under this Project Agreement including, for greater certainty, Project Co’s obligations as specified in this Schedule 18.
- (b) The Response Protocol shall, as a minimum, contain:
  - (i) details of the ways through which inquiries, comments and complaints may be submitted to Project Co including but not limited to, email, telephone, website/online, letter, fax and in person;
  - (ii) details of Project Co’s method to acknowledge inquiries, comments and complaints, in advance of providing a comprehensive response and the timing to discuss the response with Contracting Authority before issuance;
  - (iii) details of Project Co’s approach to prioritizing, recording, and tracking all inquiries, comments and complaints received;
  - (iv) details of the processes and procedures through which Project Co will ensure that each inquiry, comment or complaint is addressed and/or resolved and responded to appropriately, efficiently, courteously and comprehensively including, but not limited to Project Co’s approach to:
    - A. responding to urgent and crisis inquiries through direct contact (e.g. phone call, site visit) by Project Co within 1 hour of such an inquiry being received;
    - B. responding to warning and/or notification of safety concerns and potential environmental impacts such as noise, dust or spills;

- C. responding to warning and/or notification of potential business, local residents, farmers, active transportation groups/users, emergency services, and busses impacts;
  - D. responding to traffic and construction complaints;
  - E. responding to criticisms of Project Co employee conduct;
  - F. responding to inquiries regarding employment opportunities;
  - G. responding to inquiries and requests for documents and information; and
  - H. responding to occupational health and safety related issues or MOLTSD.
- (v) Project Co's defined roles and responsibilities for ensuring a timely, comprehensive and courteous response is provided to all inquiries, comments and complaints received;
  - (vi) details of Project Co's communications strategy to the public, drivers, emergency services, Governmental Authorities and other stakeholders of the ways through which inquiries, comments and complaints may be submitted to Project Co;
  - (vii) details of Project Co's procedures to identify trends, particularly as they relate to negative perceptions and complaints, and the means by which to proactively report concerns and identify opportunities to address negative trends and mitigate concerns to the Contracting Authority;
  - (viii) Project Co's approach to tracking, documenting and responding to enquiries, comments and complaints submitted in response to Project Co activities related to the consultation obligations and reporting requirements set out in Schedule 17 – Environmental Obligations.
  - (ix) Project Co's commitment and complete details of the approach to ensuring that no personal information provided by the public and others is disclosed; and
  - (x) Project Co's approach to Quality Management, in accordance with Schedule 11 – Quality Management and intended to ensure that all complaints submitted are addressed and resolved efficiently, courteously and comprehensively.
- (c) The structure of the Response Protocol should follow the framework detailed in Appendix C of this Schedule 18.

- (d) Project Co shall be responsible for maintaining a Response Log summarizing, in tabular form, all inquiries, comments and complaints and the responses issued by Project Co. Project Co shall update the Response Log monthly and circulate it to the CWG at least five (5) Business Days prior to each CWG meeting.

## 2.8 Crisis Communications Plan

- (a) A crisis is defined as a unique and catastrophic event that will generate ongoing media exposure lasting at least several days. An issue is defined as any event that is not unique or catastrophic and that will not generate ongoing media exposure.
- (b) No later than twenty (20) Business Days following Financial Close Project Co shall prepare and submit, pursuant to Schedule 10 - Review Procedure a comprehensive Crisis Communications Plan (the “**Crisis Communications Plan**”) that supports Project Co’s obligations under this Project Agreement including, for greater certainty, Project Co’s obligations as specified in this Schedule 18.
- (c) The Crisis Communications Plan shall be updated annually and in the month of February of each year for each subsequent submission throughout the contract term in accordance with Section 2.10 of this Schedule 18 and shall, as a minimum, contain:
- (i) Project Co policies and procedures to be followed during a crisis;
  - (ii) Project Co and Contracting Authority roles and responsibilities during a crisis; and
  - (iii) Project Co’s list of crises that could develop during the Works, and document Project Co processes for:
    - A. assessing Project related crises and determining the criticality of each crisis;
    - B. notifying Contracting Authority of each Project related crisis;
    - C. determining Project Co’s response to Project related crises and Project Co’s approach to providing updates to the Contracting Authority;
    - D. coordinating approval of each Project related crisis response strategy with Contracting Authority and Project Co’s senior executives;
    - E. liaising with stakeholders, if required;
    - F. establishing support infrastructure such as a “communications command centre”; and

- G. establishing site access protocols which shall be fully adhered to by all Project Co staff, including contractors and/ sub-contractors at all times, including without limitation, contact and provision of comments to media; use of cameras, smart phone and social media at the Site.
- (d) The structure of the Crisis Communications Plan should follow the framework detailed in Appendix D of this Schedule 18.

## 2.9 Traffic Disruption Notices

- (a) Project Co shall issue a Traffic Disruption Notice (the “**Traffic Disruption Notice**” or “**TDN**”) for all permanent and temporary Closures of: (i) a Provincial Highway lane or shoulder; and, (ii) a Municipal Highway travel lane or shoulder;
- (b) The Traffic Disruption Notice(s) shall include: (i) notice number; (ii) revision number; (iii) date; (iv) type of disruption; (v) location; (vi) area(s) affected; (vii) start date/time; (viii) end date/time; (ix) details regarding the purpose of the closure; and (x) the emergency contact from Project Co;
- (c) Traffic Disruption Notice(s) shall be provided to the Contracting Authority Representative by Project Co 5 Business Days in advance of issuance to dispatch offices;
- (d) Traffic Disruption Notice(s) shall be issued to dispatch offices of services, including the London Traffic Operation Centre, and users potentially affected by the Closure 7 Business Days in advance of the Closure and regardless of the Permitted Periods for Closure detailed in Schedule 15-2 of this Project Agreement;
- (e) The Traffic Disruption Notice(s) shall be issued electronically, in a format that is easily printable and shall be sent to dispatch offices of services, including the London Traffic Operation Centre, and users potentially affected by the Closure as agreed to with the Contracting Authority and including but not limited to emergency services including OPP, transit authorities, school bussing services, postal services, and municipal traffic offices;
- (f) Project Co shall not submit nor issue a Traffic Disruption Notice nor proceed with any Closure requiring Contracting Authority approval as defined in Schedule 15-2 of this Project Agreement without having received such approval from the Contracting Authority;
- (g) Project Co shall not submit nor issue a Traffic Disruption Notice nor proceed with any Closure requiring a permit or approval from a Governmental Authority without having received such permit or approval;

- (h) Short term reoccurring Closures shall require Project Co submit and issue a Traffic Disruption Notice on a weekly basis or as otherwise agreed to with the Contracting Authority;
- (i) Updated Traffic Disruption Notice(s) shall be issued by Project Co to advise those that received the initial notice of Closure of early openings 2 business days or greater;
- (j) Revised Traffic Disruption Notice(s) shall be issued by Project Co to advise those that received the initial notice of Closure of any adjustments to Closure start times by Project Co 1 Business Day prior to the commencement of the Closure; and
- (k) At the inaugural CWG Meeting Project Co shall submit to Contracting Authority a sample Traffic Disruption Notice to be employed by Project Co for each Traffic Disruption Notice necessary for the Project.

**2.10 Schedule of Communications Works Submittals**

<b>Number</b>	<b>Deliverable Name</b>	<b>Schedule 18 Specification Reference</b>	<b>Due Date</b>	<b>Submitted under the Review Procedure</b>
1.	Crisis Communication Plan	Section 2.8	Forty (40) Business Days following Financial Close.	Yes
2.	Crisis Communication Plan Annual Updates	Section 2.8	Annually upon the anniversary of Financial Close and in the month of February of each year for each subsequent submission.	Yes
3.	Communications Plan	Section 2.6 and Appendix A	Sixty (60) Business Days prior to Project Co undertaking any Public Communication activity.	Yes
4.	Communications Plan Annual Updates	Section 2.6 and Appendix A	Annually upon the anniversary of Financial Close and in the month of February for each subsequent submission.	Yes
5.	Response Protocol	Section 2.7	Sixty (60) Business Days prior to Project Co undertaking any Public Communication activity.	Yes
6.	Communications Working Group Agendas and Meeting Minutes	Section 2.4 and Appendix A	Agenda 5 Business Days prior to meeting. Minutes 5 Business Days following meeting.	No
7.	Governmental Authority Communications Meetings	Section 2.5	Agenda 5 Business Days prior to meeting. Minutes 5 Business Days following meeting.	No
8.	Communications Roll Out Plan	Section 2.3	At least fifteen (15) Business Days prior to the intended date of distribution or release.	No

Number	Deliverable Name	Schedule 18 Specification Reference	Due Date	Submitted under the Review Procedure
9.	All advertisements, news releases, Notices, newsletters, website postings and updates, email blasts, and community letters	Section 2.3	At least fifteen (15) Business Days prior to the intended date of distribution or release.	No
10.	Award submissions related to the Project	Appendix A	At least thirty (30) Business Days in advance of the award submission date.	Yes
11.	Traffic Disruption Notice(s)	Section 2.9	Five (5) Business Days prior to the intended date of distribution or issuance.	No

### **3 CONTRACTING AUTHORITY RESPONSIBILITIES**

#### **3.1 Contracting Authority Communications Role**

- (a) Contracting Authority shall provide oversight, approval, and/or guidance to Project Co in conducting and implementing the communications program and related Public Communications activities related to the Project.
- (b) Contracting Authority responsibilities are further detailed in Appendix A of this Schedule 18.

### **4 PROJECT CO RESPONSIBILITIES**

#### **4.1 Project Co's Communications Role**

- (a) Project Co shall plan, develop, manage and implement all Public Communications activities related to the Project.
- (b) Without limiting the generality of the foregoing, Project Co shall be responsible for the development and implementation of the plans and reports identified in Section 2.10 of this Schedule 18 and the communications obligations of this Schedule 18, including those detailed in Appendix A, and expressly stated to be delivered or complied with by Project Co.

#### **4.2 Public Disclosure and Media Releases**

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, Contracting Authority activities or any matters related thereto, without prior written consent of Contracting Authority, in its sole discretion.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, Contracting Authority activities or any matter related thereto, without prior written consent of the other Party.
- (c) Project Co shall comply, and shall ensure that all Project Co Parties comply, at all times, with 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.



**4.3 Promotional and Contract Information Construction Signage**

- (a) Project Co, or Project Co Parties and/or the Lenders, as applicable, shall comply with all promotional and contract information signage guidelines set out in Appendix A of this Schedule 18.

**4.4 In-Person Inquiries from the Public**

- (a) Project Co shall provide a project office space within its construction site office to enable members of the public to make inquiries about the Project. The project office space shall be open during business hours (8:30am to 5:00pm) Monday to Friday and shall be easily accessible from the public right of way. Project Co shall conform with health protocols established by Governmental Authorities.

APPENDIX “A”

CONTRACTING AUTHORITY’S AND PROJECT CO’S COMMUNICATIONS AND PUBLIC RELATIONS ROLES AND RESPONSIBILITIES

<b>Regarding General Communications</b>	
<p>Contracting Authority shall:</p> <ul style="list-style-type: none"> <li>(a) provide oversight, approval, and/or guidance to Project Co on all communications related activities;</li> <li>(b) review and approve the annual communications strategy and program;</li> <li>(c) inform Project Co about updates to Contracting Authority’s media release and publicity protocols or guidelines; and</li> <li>(d) ensure Project Co is informed of any award submissions related to the Project submitted by Contracting Authority.</li> </ul>	<p>Project Co shall:</p> <ul style="list-style-type: none"> <li>(a) plan, develop and execute communications and public engagement strategies and tactics that will:                             <ul style="list-style-type: none"> <li>(i) provide for timely, open, transparent, effective, consistent, courteous, comprehensive and pro-active communications;</li> <li>(ii) follow the guiding principles outlined in Section 2.2 of this Schedule 18;</li> <li>(iii) advance and maintain positive and constructive relationships with the public, drivers, emergency services, Governmental Authorities and other stakeholders; and</li> <li>(iv) inform and educate the public, drivers, emergency services, Governmental Authorities and other stakeholders that the Project has been carefully examined and that Project Co has the expertise and ability to complete the Project;</li> </ul> </li> <li>(b) report to the Contracting Authority on Public Communications activities on an agreed upon basis;</li> <li>(c) provide a Communications Director who is the dedicated communications lead for the Project, with applicable skills and experience;</li> <li>(d) provide dedicated communications personnel with appropriate skills and experience;</li> <li>(e) provide management, communication, public relations, technical, engineering and/or construction staff for involvement and participation working groups, neighbourhood issues advisory groups, community meetings and tours and events;</li> <li>(f) develop and execute strategies for messaging, including but not limited to, the Project, Project Works Schedule and other messaging in consultation with Contracting Authority;</li> </ul>

	<ul style="list-style-type: none"> <li>(g) coordinate, implement, and execute all activities related to Public Communications;</li> <li>(h) provide to Contracting Authority for use at its discretion the following items encompassing the entire limits of the Project:                         <ul style="list-style-type: none"> <li>(A) pre-construction aerial photography, with resolution sufficient to ensure sharp reproduction in publications (i.e. minimum of 1024 x 768 pixels), with jpg format through the photogrammetric service providers who use aircrafts designed for aerial photography and licensed by Transport Canada or drone video flown at approximately 15-25m above ground level with an oblique perspective on the horizon traveling on outside of the shoulders both Eastbound and Westbound with the camera pointed towards the center of Highway 3; to be provided no later than forty (40) Business Days prior to the commencement of Clearing and Grubbing and updated monthly between spring commencement of construction (no later than April 30<sup>th</sup>) and winter shut down of construction (no earlier than November 1<sup>st</sup>) thereafter and until Final Completion; and</li> <li>(B) bi-weekly 20 (minimum) high quality photographs, throughout the Project, with resolution sufficient to ensure sharp reproduction in publications (i.e., minimum of 1024 x 768 pixels), with jpg format and corresponding photographic logs that includes clear description of the construction activity, date, name and permission of any person within the photograph, location and directional view of each photograph;</li> </ul> </li> <li>(i) provide monthly updates to Contracting Authority about construction, including construction related approximations and statistics such as material volumes and weights, amount of local investments, Baseline Works Schedule and other information;</li> <li>(j) review and/or provide communications and/or technical materials reasonably requested by Contracting Authority;</li> </ul>
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	<ul style="list-style-type: none"> <li>(k) prepare and submit Look-Ahead Schedule of key dates related to Public Communications including associated public review periods;</li> <li>(l) update and submit the Look-Ahead Schedule in accordance with Schedule 12 – Works Schedule Requirements and circulate the Look-Ahead Schedule to the CWG monthly; and</li> <li>(m) inform Contracting Authority of any award submissions related to the Project (award submissions shall be submitted in accordance with Section 2.10 of this Schedule 18);</li> <li>(n) include appropriate members of the Contracting Authority on all communications and consultations with stakeholders; and</li> <li>(o) include appropriate members of the Contracting Authority on all meetings between Project Co and the public, drivers, emergency services, Governmental Authorities and other stakeholders. Prepare meeting minutes for all meetings and provide to Contracting Authority.</li> </ul>
<p><b>Service Standards for Public Communications (details shall be included in the Communications Plan) shall include the Active Offer per the Active Offer Guidelines</b></p>	
<p>Contracting Authority shall:</p> <ul style="list-style-type: none"> <li>(a) provide oversight, approval, and/or guidance to Project Co on matters related to Service Standards for Public Communications as appropriate.</li> </ul>	<p>Project Co shall abide by the following, minimum Service Standards for Public Communications:</p> <ul style="list-style-type: none"> <li>(a) Telephone:             <ol style="list-style-type: none"> <li>1. Calls answered during business hours (8:30 a.m. - 5:00 p.m.);</li> <li>2. Callers having the option of reaching a person and the call will not be redirected more than once;</li> <li>3. All calls will be returned within one Business Day; and</li> <li>4. Outside of business hours, emergency calls will be directed to a standby operator who will contact the Project Co Representative and other emergency response services if required.</li> </ol> </li> <li>(b) Correspondence:             <ol style="list-style-type: none"> <li>1. Correspondence will be answered within ten (10) Business Days of receipt;</li> <li>2. If a conclusive response is not possible within the time, an interim</li> </ol> </li> </ul>

	<p>acknowledgement with an anticipated date of response will be provided within five (5) Business Days of receipt; and</p> <p>3. No more than 10% of correspondence received may receive an interim acknowledgement.</p> <p>(c) Feedback and Complaint Resolution:</p> <ol style="list-style-type: none"> <li>1. A complaint resolution process will be established and implemented;</li> <li>2. Complaints will be documented and acknowledged in two (2) Business Days;</li> <li>3. Required action will be followed up within the specified time frame; and</li> <li>4. An opportunity to provide feedback on the service will be established and implemented.</li> </ol> <p>(d) <i>Accessibility for Ontarians with Disabilities Act</i> and Applicable Law:</p> <ol style="list-style-type: none"> <li>1. All services provided by Project Co shall comply with Applicable Law including the <i>Accessibility for Ontarians with Disabilities Act</i>.</li> </ol>
<b>Regarding Media Relations (details to be included in the Communications Plan)</b>	
<p>Contracting Authority shall:</p> <ol style="list-style-type: none"> <li>(a) provide a dedicated, experienced media-trained spokesperson, with back-up media-trained personnel, as required with 24/7 availability.</li> <li>(b) assess media enquiries and determine the appropriate spokesperson, means of response, and approvals of Project Co’s recommended response, means/method of response, and identification of a potential spokesperson.</li> </ol>	<p>Project Co shall:</p> <ol style="list-style-type: none"> <li>(a) provide a dedicated, experienced media-trained spokesperson (with back-up media-trained personnel, as required) with 24/7 availability.</li> <li>(b) develop a protocol for handling requests from the media that includes but is not limited to directing all media enquiries and interview requests to the Contracting Authority’s communication representative, with recommended responses, means/method of response, and identification of a potential spokesperson.</li> <li>(c) use all reasonable efforts to have an initial response to Contracting Authority within two hours of the original contact.</li> <li>(d) provide a brief media report immediately following contact with the media to Contracting Authority highlighting unexpected questions or potentially contentious developments.</li> </ol>

	<ul style="list-style-type: none"> <li>(e) following a publication or broadcast, monitor the media, assess the coverage and strategize any further action, if required.</li> <li>(f) develop an online media room that includes, without limitation, backgrounders, news releases, maps and other information.</li> <li>(g) include media and sensitivity training for all workers who will be on the construction site. All on-site workers shall be made aware that they are not to speak to the media, nor are they to allow media access to the Lands.</li> </ul>
<b>Regarding Project Website (details shall be included in the Communications Plan)</b>	
<p>Contracting Authority shall:</p> <ul style="list-style-type: none"> <li>(a) provide oversight, approval, and/or guidance to Project Co on matters related to the Project website as appropriate.</li> </ul>	<p>Project Co shall:</p> <ul style="list-style-type: none"> <li>(a) plan, develop, implement and maintain a Project website, prior to Project Co undertaking any other Public Communications, including but not limited to publishing the Notice of Study Commencement, that includes, but is not limited to, the following:                             <ul style="list-style-type: none"> <li>(i) a home page that includes any approved branding and Project Co’s corporate logo, the Project name, and appropriate Project maps.</li> <li>(ii) separate pages providing previous study documentation including the previous TESR’s and associated Appendix and supplementary Reports; Project Co study documentation including communications and Environmental Assessment Submittals where appropriate; contact information including phone numbers and email addresses; construction updates and summary schedule(s); road/lane closure notifications; frequently asked questions; news; Notices; consultation events calendar; online magazine or newsletter; online consultation capabilities; subscriptions; facts and figures; graphics including photo/video gallery; site map; links to resources; and, other content and capabilities as appropriate.</li> </ul> </li> <li>(b) develop a Privacy Policy as required under the <i>Freedom of Information and Protection of Privacy Act</i>.</li> <li>(c) develop and manage a subscription service that complies with requirements in the <i>Personal</i></li> </ul>

	<p><i>Information Protection and Electronic Documents Act (PIPEDA).</i></p> <p>(d) transfer ownership of the domain for the Project website to Contracting Authority at Final Completion.</p> <p>(e) maintain all material previously posted on Project website until Final Completion.</p>
<p><b>Regarding Social Media (details to be included in the Communications Plan)</b></p>	
<p>Contracting Authority shall:</p> <p>(a) provide oversight, approval, and/or guidance to Project Co on matters related to a social media strategy for the Project.</p>	<p>Project Co shall:</p> <p>(a) develop social media guidelines for all staff participating in the Project outlining an acceptable use policy, including the tone, timing, and acceptable contents of social media postings.</p> <p>(b) monitor social media outlets on a daily basis to note trending comments and determine suitable response or action.</p>
<p><b>Regarding Tours and Events (details shall be included in the Communications Plan)</b></p>	
<p>Contracting Authority shall:</p> <p>(a) provide oversight, approval, and/or guidance to Project Co in the development, planning and coordination of tours and events (i.e., construction tours, milestone tours, celebrations, ceremonies and commemorations associated with the Project);</p> <p>(b) Review and approve planning and coordination of tours and events.</p>	<p>Project Co shall:</p> <p>(a) develop, plan, and execute tours and events in collaboration with Contracting Authority (i.e. construction tours, milestone tours, celebrations, ceremonies and commemorations associated with the Project);</p> <p>(b) provide Contracting Authority access to the Lands for tours and events;</p> <p>(c) provide management, technical, engineering and/or construction staff for involvement and participation at tours and events.</p> <p>(d) arrange logistics of tours and events related to the Works, including the provision of required equipment, such as chairs, tables, audiovisuals or vehicles, safety training, orientation, as well as catering, security or other personnel; and</p> <p>(e) develop material and content for and arrange media releases, invitations, or advertisement of tours and events, as appropriate.</p>
<p><b>Regarding Promotional and Contract Information Signage (details shall be included in the Communications Plan)</b></p>	
<p>Contracting Authority shall:</p> <p>(a) provide oversight, approval, and/or guidance to Project Co on the development of promotional or contract information signage.</p>	<p>Project Co shall:</p> <p>(a) comply with Contracting Authority signage policy and visual identity guidelines, with respect to any signage that may be erected and</p>

<p>(b) review and approve signage developed by Project Co before any promotional and contract information signage is erected at or on the Site, Lands or Project.</p> <p>(c) Provide Government-branded signage for installation, at locations to be determined in consultation with Project Co.</p>	<p>maintained at or on the Lands or Project, Project Co, Project Co Parties and/or the Lenders, as applicable;</p> <p>(b) include appropriate logos on signs;</p> <p>(c) comply with language requirements as per Schedule 18, Section 2.2;</p> <p>(d) comply with Ontario Traffic Manuals to ensure sign are legible from at an appropriate distance and do not create a hazard;</p> <p>(e) the background colour will not be red, yellow, or orange and may be non-reflectORIZED;</p> <p>(f) use signage material suitable for long-term outdoor weather exposure;</p> <p>(g) provide a mock-up of the signage to Contracting Authority representative for approval 17 Business Days prior to manufacturing signage;</p> <p>(h) be responsible for installation, maintenance and removal of the signage;</p> <p>(i) erect contract information signage that includes Project Co’s logo and contact information (i.e., a phone number and email address) at locations where the public encounters disruption due to the construction (i.e., road closures or construction equipment entering or leaving the construction site); and</p> <p>(j) install Government-branded signage as requested by Contracting Authority, at locations to be determined.</p>
<p><b>Regarding Project Identity/Graphic Design (details shall be included in the Communications Plan)</b></p>	
<p>Contracting Authority shall:</p> <p>(a) provide Project Co with Project branding as appropriate.</p> <p>(b) provide Project Co with design templates for any identity/graphic designs produced by Contracting Authority.</p>	<p>Project Co shall:</p> <p>(a) use Project branding as directed by Contracting Authority.</p> <p>(b) apply Contracting Authority’s design templates and comply with identity standards on all communication materials.</p>
<p><b>Regarding Performance Review</b></p>	
<p>Contracting Authority shall:</p> <p>(a) provide Project Co with feedback regarding its performance to comply with the requirements outlined in this Schedule 18.</p>	<p>Project Co shall:</p> <p>(a) comply with the requirements outlined to deliver effective Public Communications and all other matters associated with this Schedule 18.</p>



**APPENDIX “B”****FRAMEWORK FOR THE COMMUNICATIONS PLAN**

1. INTRODUCTION
  - a. PURPOSE OF THE COMMUNICATIONS PLAN
  - b. PROJECT BACKGROUND
  - c. GLOSSARY OF TERMS
2. VISION, GOALS AND VALUES OF COMMUNICATIONS ON THE PROJECT
  - a. VISION
  - b. GOALS
  - c. VALUES
3. GUIDING PRINCIPLES
  - a. HOW COMMUNICATIONS INTEGRATES ACROSS THE PROJECT’S FUNCTIONS
  - b. VALUES TO BE ADOPTED IN COMMUNICATIONS ON THE PROJECT
4. STAKEHOLDERS, THEIR CURRENT POSITIONS AND CONCERNS
  - a. TARGET/KEY STAKEHOLDER AUDIENCES
  - b. STAKEHOLDER CURRENT POSITIONS AND CONCERNS
5. SUMMARY OF PAST MEDIA COVERAGE AND PUBLIC OPINION
6. COMMUNICATIONS TEAM ORGANISATION
  - a. PROJECT CO’S TEAM STRUCTURE
  - b. DEFINITION OF PROJECT CO’S ROLES AND RESPONSIBILITIES
  - c. IDENTIFICATION OF INDIVIDUALS FOR EACH ROLE
7. COMMUNICATIONS GOVERNANCE
  - a. PROTOCOLS FOR MANAGING COMMUNICATIONS (INCLUDING PREPARATION OF COMMUNICATIONS ROLL OUT PLANS)
  - b. INTERFACE WITH SPONSOR’S COMMUNICATION REPRESENTATIVE
  - c. COMMUNICATIONS WORKING GROUP
  - d. GOVERNMENTAL AUTHORITY COMMUNICATIONS MEETINGS
8. COMMUNICATIONS STRATEGY
  - a. OVERARCHING APPROACH TO PROJECT COMMUNICATIONS (INCLUDING RESPONSIVENESS AND SERVICE STANDARDS)
  - b. OVERARCHING APPROACH TO COMMUNITY RELATIONS (INCLUDING INDIGENOUS COMMUNITIES)
  - c. INTEGRATION BETWEEN THE COMMUNICATIONS PLAN AND THE SCHEDULE 15-2 TRAFFIC MANAGEMENT COMMUNICATIONS PLAN
  - d. INTEGRATION BETWEEN THE COMMUNICATIONS PLAN AND THE SCHEDULE 17 CONSULTATION PLAN
  - e. INTEGRATION BETWEEN THE COMMUNICATION PLAN AND THE SCHEDULE 11 QUALITY MANAGEMENT
  - f. OVERARCHING APPROACH TO CRISIS COMMUNICATIONS
  - g. SPECIFIC APPROACHES, MESSAGES AND OBJECTIVES FOR EACH STAKEHOLDER

- h. APPROACH TO MONITORING STAKEHOLDERS' POSITIONS
- i. APPROACH TO MONITORING COMMUNICATIONS PERFORMANCE
- j. APPROACH TO DATA PRIVACY
- 9. SCHEDULE OF COMMUNICATIONS ACTIVITIES
  - a. MOBILISATION PLAN
  - b. MONTH BY MONTH ACTION PLAN THAT SHOWS ALIGNMENT WITH DESIGN AND CONSTRUCTION ACTIVITIES AND MILESTONES
- 10. COMMUNICATIONS METHODS AND PROTOCOLS (INCLUDING HOW SERVICE STANDARDS WILL BE ACHIEVED)
  - a. TRAFFIC DISRUPTION NOTICES
  - b. COMMUNITY RELATIONS
  - c. MEDIA RELATIONS
  - d. ADVERTISING
  - e. TOURS AND EVENTS
  - f. WEBSITE
  - g. PROJECT E-NEWSLETTERS/E-ALERTS/E-BLASTS
  - h. TELEPHONE HELPDESK
  - i. CORRESPONDENCE MANAGEMENT
  - j. SUBMISSIONS TO ONTARIO 511 TRAVELLER INFORMATION
  - k. PRESENTATIONS TO STAKEHOLDERS
  - l. COMMUNICATIONS TO PROJECT CO STAFF
  - m. TRAINING OF PROJECT CO STAFF IN COMMUNICATIONS AND COMMUNITY RELATIONS EXPECTATIONS
  - n. ANY OTHER NOT INCLUDED ABOVE
- 11. COMMUNICATIONS TOOLS TO BE MANAGED BY PROJECT CO
  - a. WEBSITE
  - b. E-MAIL
  - c. TELEPHONE HELPDESK
  - d. MEDIA ACTIVITY MONITORING (INCLUDING SOCIAL MEDIA)
  - e. PROMOTIONAL AND CONTRACT INFORMATION SIGNAGE
  - f. CONSTRUCTION SIGNAGE
  - g. VARIABLE MESSAGE BOARDS
  - h. PHOTOGRAPHY AND VIDEOGRAPHY
  - i. IN-PERSON INQUIRY
  - j. ANY OTHER NOT INCLUDED ABOVE
- 12. PROJECT IDENTITY AND BRANDING
- 13. FREQUENTLY ASKED QUESTIONS

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**APPENDIX “C”****FRAMEWORK FOR THE RESPONSE PROTOCOL**

1. INTRODUCTION
  - A. PURPOSE OF COMMUNICATIONS RESPONSE PROTOCOL
  - B. PROJECT BACKGROUND
  - C. GLOSSARY OF TERMS
2. VISION AND GOALS OF COMMUNICATIONS RESPONSE PROTOCOL ON THE PROJECT
  - A. VISION
  - B. GOALS
3. GUIDING PRINCIPLES
  - A. HOW THE COMMUNICATIONS RESPONSE PROTOCOL INTEGRATES ACROSS THE PROJECT’S FUNCTIONS
  - B. VALUES TO BE ADOPTED IN THE COMMUNICATIONS RESPONSE PROTOCOL ON THE PROJECT
4. ROLES AND RESPONSIBILITIES RELATING TO THE COMMUNICATIONS RESPONSE PROTOCOL
5. STRATEGY FOR INFORMING STAKEHOLDERS ABOUT SUBMISSION PROCESS
6. PROCESSES FOR RESPONDING TO INQUIRIES, COMMENTS AND COMPLAINTS
  - A. SUBMISSION PROCESSES FOR SUBMISSION OF INQUIRIES, COMMENTS AND COMPLAINTS
  - B. ACKNOWLEDGEMENT PROCESSES FOR ACKNOWLEDGING INQUIRIES, COMMENTS AND COMPLAINTS
  - C. PRIORITIZING, RECORDING, AND TRACKING PROCESSES
  - D. RESOLUTION PROCESSES
  - E. RESPONSE PROCESSES
7. APPROACH TO ACHIEVING SERVICE STANDARDS FOR PUBLIC COMMUNICATIONS
  - A. TELEPHONE
  - B. CORRESPONDENCE
  - C. EMAIL, SOCIAL MEDIA
  - D. IN-PERSON PUBLIC ENQUIRY
  - E. OTHER
8. DEFINITION OF THE RESPONSE LOG
9. APPROACH TO MONITORING AND REPORTING ON STATUS AND TRENDS
  - A. OF INQUIRIES, COMMENTS AND COMPLAINTS
  - B. OF ENVIRONMENTAL CONSULTATION PROCESS
10. APPROACH TO DATA PRIVACY
11. APPROACH TO QUALITY MANAGEMENT

## APPENDIX “D”

### FRAMEWORK FOR THE CRISIS COMMUNICATIONS PLAN

1. INTRODUCTION
  - A. PURPOSE OF THE CRISIS COMMUNICATIONS PLAN
  - B. PROJECT BACKGROUND
  - C. GLOSSARY OF TERMS
2. VISION AND GOALS OF CRISIS COMMUNICATIONS ON THE PROJECT
  - A. VISION
  - B. GOALS
3. GUIDING PRINCIPLES
  - A. HOW CRISIS COMMUNICATIONS INTEGRATES ACROSS THE PROJECT’S FUNCTIONS
  - B. VALUES TO BE ADOPTED IN CRISIS COMMUNICATIONS ON THE PROJECT
  - C. CRISIS COMMUNICATIONS OBJECTIVES AND GOALS
4. APPROACH TO INITIATING THE CRISIS COMMUNICATIONS RESPONSE
  - A. TYPES OF CRISES TO BE PREPARED FOR
  - B. THRESHOLDS THAT WILL TRIGGER A CRISIS COMMUNICATIONS RESPONSE
5. ROLES AND RESPONSIBILITIES DURING A CRISIS
6. APPROACH TO MANAGING THE CRISIS
  - A. USE OF COMMAND CENTRE
  - B. FIRST HOUR RESPONSE
  - C. NEXT STEPS
  - D. INTERFACING WITH THE MEDIA
  - E. KEY MESSAGES FOR DIFFERENT TYPE OF CRISES
7. POST-OCCURRENCE ANALYSIS, DEBRIEFING AND REPORT

**SCHEDULE 19**

**PAYMENT PROCEDURES**

**[REDACTED]**

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**SCHEDULE 20****LANDS****Part 1: Owned Lands****Owned Lands Phase I**

1. 751450246 - Firstly: PT RDAL BTN LOT 6 & LOT 7 Gosfield; RDAL BTN CON 2 & CON 3 Gosfield E of line BTN SW angle of PT 1, 12R8279 & NW angle of PT 2, 12R8279 and W of RDAL BTN LOT 6 & 7 Gosfield; Secondly: PT LT 6 CON 2 Eastern division Gosfield PT 2, 12R8279, PT 1, 12R8303; PT LT 6 CON 3 Eastern division Gosfield PT 1, 12R8279, being Graham Rd (formerly Graham Sideroad) BTN Road 4 E & Road 2 E; S/T R317055; Kingsville
2. 751450262 - PT LT 7-9 CON 3 Eastern division Gosfield PT 1, 2, 3, 4, 5, RD187; AKA Hwy 3; S/T GS14768, R257230; Kingsville
3. Part of 751450263 - PT LT 7 CON 3 Eastern division Gosfield PT 1 & 2 12R17571; Kingsville  
  
Shown as Part 3 of 12R28847 (P-4095-33).
4. Part of 751450364 - PT LT 7 CON 3 Eastern division Gosfield being PTS 2, 3 & 5, 12R26228 subject to an easement over part 1 plan 12R-27950 as in C913289 town of Kingsville  
  
Shown as Parts 4, 5 and 6 of 12R28847 (P-4095-33).
5. 751470189 - RDL BTN LT 9 CON 3 & LT 10 CON 3 ED, PT LT 9-13 CON 3 ED as in R129402, PT 1 to 4 RD 165, PT 11, 13, 17 to 19, 23, 24, 26, 27 RD289, PT 8 to 10 RD 289, PT 1, 2, 4 RD307, PT 2 to 5 RD289, PT 2 12R15392, PT 1 to 3 RD192, PT 1 & 2 RD205 being Hwy 3 (new) BTN RD 187 & County RD 31 S/T GS14707; Kingsville
6. 751490108 - PT LT 261-262 CON STR Gosfield; PT N1/2 LT 263 CON STR Gosfield; PT S1/2 LT 263 CON STR Gosfield PT 1 to 15 & PT 17 to 19 RD200 & PT 1 RD295 (AKA highway 3); S/T GS14539, GS14555, GS14700; Kingsville
7. Part of 751490123 - PT LT 261 CON STR Gosfield as in R1243009; Kingsville  
  
Shown as Part 1 of 12R28842 (P-4095-34).

8. 751490135 - PT LT A or gore CON STR Gosfield; PT LT 16 CON 4 Gosfield; PT LT 260 CON STR Gosfield; PT RDAL BTN CON 3 & CON 4 Gosfield (closed by R482830) PTS 1, 2 R482830 & PTS 1 to 18 RD197 AKA Highway 3; S/T GS14701, GS14705; Kingsville
9. Part of 751490136 - PT LT A or gore CON STR Gosfield as in R626596 except PT 1 12R12872; S Kingsville subject to an easement in gross over part 1, 12R27652 as in CE872211  
  
Shown as Parts 10 and 11 of 12R28846 (P-4095-32).
10. Part of 751490139 - PT LT 16 CON 4 Gosfield as in R1491636; S/T execution 00-01159, if enforceable; Kingsville  
  
Shown as Part 12 of 12R28846 (P-4095-32).
11. Part of 751490142 - PT LT 16 CON 4 Gosfield as in R1167418; Kingsville  
  
Shown as Part 8 of 12R28846 (P-4095-32).
12. Part of 751490143 - PT LT 16 CON 4 Gosfield; PT LT 260 CON STR Gosfield PTS 2 to 4 12R17596 town of Kingsville  
  
Shown as Parts 7 and 9 of 12R28846 (P-4095-32).
13. Part of 751600041 - PT LT 4-5 CON 9 Gosfield PT 1 12R4700 except PT 1 12R6249 & PT 2 12R6639; S/T R839476; Kingsville  
  
Shown as Part 1 of 12R28843 (P-4088-35).
14. 751600062 - PT LT 5 CON 9 Gosfield PT 6 Rd223; Kingsville
15. 751600069 - Firstly: PT RDAL BTN CON 7 & CON 8 Gosfield; PT RDAL BTN LT 7 CON 8 & LT 8 CON 8 Gosfield PT 1 R836550, N of LT 7 & 8 CON 7; PT LT 7 CON 8 Gosfield PT 2 to 4 RD222; Secondly: PT LT 8 CON 8 Gosfield PT 8 RD208, being Highway No. 3; Kingsville
16. Part of 751600087 - Part lot 6 Concession 8 Gosfield as in R1124013 save and except part 1 plan 12R27270 and part lots 5 - 7 Concession 8 Gosfield as in R1211509 Town of Kingsville

Shown as Part 1 of 12R28844 (P-4088-36).

17. 751610051 - PT RDAL BTN LT 7 & LT 8 CON 8 Gosfield PT 6 RD208; PT RDAL BTN CON 7 & CON 8 Gosfield; PT RDAL BTN CON 8 & CON 9 Gosfield closed by R482830; PT LT 8-9 CON 7 Gosfield as in R481517, R496126, R487949; PT LT 5-8 CON 8 Gosfield as in R490369, R483322, R484486, R518376, R474329; PT LT 5 CON 9 Gosfield as in R484426 being Highway 3 BTN Cottam Sideroad & Cameron Sideroad; Kingsville

18. Part of 751610230 - PT LT 270 CON STR Gosfield designated as PT 3 on PL 12R24638 Town of Kingsville

Shown as Part 2 of 12R28845 (P-4088-34).

19. Part of 751610231 - PT LT 270 CON STR Gosfield designated as PT 2 on PL 12R24638 Town of Kingsville

Shown as Part 1 of 12R28845 (P-4088-34).

20. 751640030 - PT LT 265-267 CON STR Gosfield being a forced RD (AKA Division Rd, AKA county Rd 29) BTN South Talbot Rd & County Rd 34; Kingsville

21. 751640033 - RDAL BTN TWP of Gosfield North & Gosfield South Gosfield (AKA Inman Sideroad, AKA Townline Rd) PTS 4 TO 7 12R12942; Kingsville

22. 751640035 - PT S1/2 LT 264 CON STR Gosfield PT 3 RD206; Kingsville

23. 751640036 - RDAL BTN TWP of Gosfield North & Gosfield South Gosfield (AKA South Talbot Rd) PT 3 R836551; Kingsville

24. Part of 751640037 - PT S1/2 LT 264 CON STR Gosfield PT 1 to 6 RD294; S/T GN9989; Kingsville

Shown as Parts 11 and 12 of 12R28848 (P-4095-31).

25. Part of 751640038 - PT S1/2 LT 264 CON STR Gosfield; PT N1/2 LT 264 CON STR Gosfield as in R414074 & R325919 lying W of 12R737; Kingsville

Shown as Parts 10 and 13 of 12R28848 (P-4095-31).



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26. Part of 751640088 - PT LT 265 CON STR Gosfield as in R853487 except PT 2  
12R18942; Kingsville  
  
Shown as Part 1 of 12R28848 (P-4095-31).
27. Part of 751640089 - PT LT 265 CON STR Gosfield as in R1450392; Kingsville  
  
Shown as Part 2 of 12R28848 (P-4095-31).
28. Part of 751640090 - PT LT 265 CON STR Gosfield as in R1416681; Kingsville  
  
Shown as Part 3 of 12R28848 (P-4095-31).
29. Part of 751640092 - PT S1/2 LT 264 CON STR Gosfield as in R1480174; Kingsville  
  
Shown as Part 9 of 12R28848 (P-4095-31).
30. 751640093 - PT S1/2 LT 264 CON STR Gosfield as in R1480174; Kingsville
31. 751640104 - PT LTS 264 & 265, CON South Talbot Road designated as PTS 1, 2, 3  
& 4, PL 12R23174 Kingsville; S/T ease over PT 4, PL 12R23174 as in R411321
32. Part of 751640105 - PT LTs 264 & 265, CON South Talbot Road designated as PTS  
5, 6 & 7, PL12R23174 Kingsville; S/T ease over PT 5, PL 12R23174 as in R411321  
  
Shown as Parts 5 and 7 of 12R28848 (P-4095-31).
33. Part of 751640106 – PT LTS 264 & 265, CON South Talbot Road designated as PTS 8  
& 9, PL 12R23174; Kingsville  
  
Shown as Parts 4 and 6 of 12R28848 (P-4095-31).
34. Part of 751640107 - PT LTS 264, CON South Talbot Road designated as PTS 10, PL  
12R23174; Kingsville  
  
Shown as Parts 8, 14 and 15 as 12R28848 (P-4095-31).
35. 751640113 - Part S1/2 lot 264 Concession STR Gosfield, part 9 plan 12R27800 Town  
of Kingsville
36. 751650253 - RDAL BTN LT 7 & LT 8 CON 7 Gosfield; PT LT 7 CON 7 Gosfield PT  
1 RD222, PT 1 R836550 S of 8th CON RD AKA Marsh Rd; Kingsville

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37. Part of 751650259 - PT LT 9 CON 7 Gosfield as in R1534307; Kingsville  
Shown as Part 4 of 12R28845 (P-4088-34).
38. Part of 751650263 - PT LT 9-10 CON 7 Gosfield PT 1 RD304; Kingsville  
Shown as Part 5 of 12R28845 (P-4088-34).
39. 751650278 - PT LT 9-11 CON 6 Gosfield PT 2 to 4, 6 to 10, 12 to 15 RD210; being Kings Hwy #3; Kingsville
40. 751650286 - PT LT 265 CON STR Gosfield as in R1481392; S/T GN10037; Kingsville
41. 751650455 - PT LT 9-10 CON 7 Gosfield PT 1, 2 RD208; being Kings Highway #3; Kingsville
42. 751650456 - RDAL BTN CON 6 & CON 7 Gosfield closed by R482830; as in R482830; being Kings Hwy #3; Kingsville
43. 751650457 - RDAL BTN Township of Gosfield North & Township of Gosfield South closed by R482830; as in R482830; being Kings Hwy #3; Kingsville
44. 751650458 - PT LT 11-12 CON 5 Gosfield PT 29, 31 RD206; being Kings Hwy #3; Kingsville
45. Part of 751660103 - PT LT 7 CON 7 Gosfield as in R1211509; Kingsville  
Shown as Part 2 of 12R28844 (P-4088-36).
46. Part of 751680092 - PT LT 12 CON 5 Gosfield PT 2 12R7939; Kingsville  
Shown as Part 18 of 12R28848 (P-4095-31).
47. Part of 751680093 - PT LT 12 CON 5 Gosfield PT 10, 13 RD206; Kingsville  
Shown as Part 19 of 12R28848 (P-4095-31).
48. Part of 751680094 - PT LT 12 CON 5 Gosfield PT 1, 2 12R16892; Kingsville  
Shown as Part 17 of 12R28848 (P-4095-31).

49. Part of 751680109 - PT LT 12 CON 5 Gosfield PT 1 12R7142; Kingsville  
Shown as Part 16 of 12R28848 (P-4095-31).
50. 751680112 - PT LT 12 CON 5 Gosfield (AKA Division Rd) PT 5, 6, 7, 9, 14 & 17 RD206, PT 2 R836551 except R888946; Kingsville
51. 751680113 - PT LT 12 CON 5 Gosfield as in GS11084 & PT forced RD (AKA Division Rd) BTN Service Rd & Road 5; Kingsville
52. Part of 751690104 - PT LT 5 CON 3 Eastern division Gosfield PT 1 RD279; Kingsville  
Shown as Part 1 of 12R28846 (P-4095-32).
53. Part of 751690105 - PT LT 5-6 CON 3 Eastern division Gosfield PT 2 12R16620, PT 1 & 2 12R18933; Kingsville  
Shown as Part 2 of 12R28846 (P-4095-32).
54. 751690107 - PT LT 5-6 CON 3 Eastern division Gosfield PT 2, 3, 6, 7, 9 - 12 RD189; being Kings Highway 3 BTN Graham Rd & Road 4 E; Kingsville
55. Part of 751690111 - PT LT 6 CON 3 Eastern division Gosfield PT 2 12R2247 except PT 1 12R8279 & PT 1 12R10253; Kingsville  
Shown as Part 2 of 12R28847 (P-4095-33).
56. Part of 751690178 - PT LT 4-5 CON 3 Eastern division designated as PT 1 on PL 12R22994, PT LT 5 CON 3 Eastern division designated as PT 2 on RD279 and PT 2 on PL 12R22994; Kingsville. Subject to an easement in gross over part 3, 12R27652 as in CE871845  
Shown as Part 3 of 12R28846 (P-4095-32).
57. Part of 751690185 - PT LT 6 CON 3 Eastern division Gosfield, designated as PT 1 PL 12R20425 & PT 1 PL 12R24954 Town of Kingsville  
Shown as Part 1 of 12R28847 (P-4095-33).
58. Part of 751490119 - PT LT 261 CON STR Gosfield as in R1477214; S/T GS14555; Kingsville subject to an easement in gross over Part 7, 12R27639 AS IN CE871849

Shown as Part 2 and 3 of 12R28842 (P-4095-34) and as Part 1 of 12R29161 (P- 4095-66).

59. Part of 751650308 - PT SW1/2 LT 269 CON STR Gosfield as in R954500; S/T GN10068; Kingsville

Shown as Part 3 of 12R28845 (P-4088-34).

60. Part of 751690175 - PT LT 4 CON 3 Eastern division Gosfield PT 2 12R2358 except PT 1 12R13304 except PT 1 12R22994; Kingsville subject to an easement in gross over part 2, 12R27652 as in CE871843

Shown as Parts 4, 5 and 6 in 12R28846 (P-4095-32).

### **Owned Lands Phase II**

61. 751590031 - PT LT 2-5 CON 9 Gosfield PT 18 RD223, PT 9 to 12 RD223, PT 7, 8 RD223, PT 4 & PT PT 1 RD223; being Kings Hwy 3 BTN Cameron Sideroad and RDAL BTN CON 9 & CON STR; Kingsville

### **Part 2: Non-Owned Lands**

#### **Permissions to Enter**

62. 751590096 - RDAL BTN CON 9 & CON STR Gosfield AKA South Talbot Rd BTN R460622 & Cameron Sideroad; PT LT 279 CON STR (AKA RDAL Known as Malden Rd) Gosfield as in R440048; PT RDAL BTN CON 9 & CON STR Gosfield Closed by R482830 as in R460622; Kingsville
63. 751610050 - RDAL BTN LT 275 CON STR & LT 276 CON STR Gosfield being Cameron Sideroad BTN County Road 34 and South Talbot Road; Kingsville
64. 751610052 - PT RDAL BTN CON 7 & CON STR Gosfield being South Talbot Rd BTN Cameron Sideroad & Cottam Sideroad; Kingsville
65. 751600043 - RDAL BTN CON 8 & CON 9 Gosfield AKA 9th Concession Rd BTN Kings Hwy 3 & Arner Townline Rd; Kingsville
66. 751610054 - N1/2 LT 272 CON STR Gosfield; SW1/2 LT 272 CON STR Gosfield being a forced Road (AKA Marsh Road) BTN South Talbot Road & County Road 34; Kingsville

67. 751650309 - RDAL BTN LT 269 CON STR & LT 270 CON STR Gosfield AKA County RD 27 BTN S Talbot Rd & Talbot Rd; Kingsville
68. 751650262 - Firstly: PT LT 8 CON 7 Gosfield; PT LT 9 CON 7 Gosfield as in R239808; Secondly: PT LT 7-8 CON 7 Gosfield being a forced RD (AKA Cottam Sideroad) BTN County RD 27 & Talbot Rd; Kingsville
69. 751650297 - RDAL BTN CON 7 & CON STR Gosfield; RDAL BTN CON 6 & CON STR Gosfield; RDAL BTN Township of Gosfield North & Township of Gosfield South AKA South Talbot Rd BTN Division Rd & County Rd 27; Kingsville
70. 751640031 - RDAL BTN TWP of Gosfield North & Gosfield South Gosfield (aka Inman Sideroad, AKA Townline Rd) BTN Kings Hwy 3 & County Rd 34; Kingsville
71. 751640032 - PT LT 265-267 CON STR Gosfield as in R370596 & GN8324; Kingsville
72. 751640094 - RDAL BTN TWP of Gosfield North & Gosfield South Gosfield (AKA South Talbot Rd) designated as PT 3 12R24010; Kingsville
73. 751490120 - PT LT A or gore, 261 CON STR Gosfield as in GS3984, GS3985, R350728, R350729, R350730 (AKA Upcott Sideroad); Kingsville
74. 751490031 - RDAL BTN CON 3 & CON 4 Gosfield AKA County Rd 18 BTN South Talbot Rd & Hwy #3; Kingsville
75. 751490166 - RDAL BTN CON 3 & CON 4 Gosfield AKA County RD 18 BTN Hwy #3 & Graham Sideroad; Kingsville
76. 751450359 –PT LT 7 CON 3 EASTERN DIVISION GOSFIELD DESIGNATED AS PT 4 PL 12R26228 TOWN OF KINGSVILLE
77. 751470050 - RDAL BTN LT 9 CON 3 ed & LT 10 CON 3 ed Gosfield; PT LT 9-10 CON 3 Eastern division Gosfield as in R884237 being county RD 34; AKA Hwy 3 (old) AKA Talbot RD BTN county RD 18 & kings Hwy 3; Kingsville
78. 751470051 - RDAL BTN LT 9 CON 3 ed & LT 10 CON 3 ED Gosfield; RDAL BTN CON 2 & CON 3 Gosfield; PT LT 9-10 CON 3 Eastern division Gosfield as in R1486713 being Union Rd AKA Hwy 3 (old) AKA Talbot Rd; BTN Road 3 East & Kings Highway 3; Kingsville

79. 751640033 – RDAL BTN TWP OF GOSFIELD NORTH & GOSFIELD SOUTH  
GOSFIELD (AKA INMAN SIDEROAD, AKA TOWNLINE RD) PTS 4 TO 7  
12R12942; Kingsville

**Temporary Limited Interest – Available January 1, 2023**

80. Part of 751640106 – PT LTS 264 & 265, CON South Talbot Road designated as PTS 8  
& 9, PL 12R23174; Kingsville

Shown as Part 20 of 12R28848 (P-4095-31).

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**SCHEDULE 21****CONSTRUCTION PERIOD FAILURES****1. INTERPRETATION AND DEFINITIONS****1.1 Definitions**

In this Schedule 21, unless the context otherwise requires:

- (a) **“Completed Works”** means all physical elements of the Works:
- (i) that have been accepted by Project Co as meeting its acceptance criteria for those Works pursuant to the relevant Inspection and Test Plan/ITP Checklist;
  - (ii) where Project Co has stated completion of such Works; or
  - (iii) where such physical Works (or elements of the Works) are completed to a point where significant rework, replacement or repair will be required if such Works were found to be non-conforming with the Project Agreement.
- (b) **“Construction Period”** means the period from the date of Financial Close to the Substantial Completion Date.
- (c) **“Construction Period Deduction”** means a deduction by Contracting Authority from the Substantial Completion Payment, as determined by Contracting Authority in its sole discretion, pursuant to Section 3.1 of this Schedule 21, and as calculated in accordance with Section 3.2 of this Schedule 21.
- (d) **“Construction Period Event”** means an incident or state of affairs that does not meet or comply with the Construction Period Performance Criteria, which is capable of becoming a Construction Period Quality Failure.
- (e) **“Construction Period Performance Criteria”** means the requirements, as set out in Column 2 of Tables 1 to 3 in Attachment A of this Schedule 21, describing the performance that Project Co must achieve to attain compliance with the relevant provisions of the Project Agreement, as referenced in Column 1 of Tables 1 to 3 in Attachment A of this Schedule 21.
- (f) **“Construction Period Performance Monitoring Report”** means the monthly report which Project Co has an obligation to prepare for Contracting Authority in respect of Project Co’s Construction Period Quality Failures accrued since the last Construction Period Performance Monitoring Report.

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- (g) **“Construction Period Quality Failure”** means any failure by Project Co to provide the services in accordance with any Construction Period Performance Criteria.
- (h) **“CPQF Objection Notice”** has the meaning given in Section 2.3(a) of this Schedule 21.
- (i) **“Critical Qualifying NCR”** means a Qualifying NCR raised on a Non-Conformance that requires all or any portion of Completed Works to be removed or repeated because such Completed Works have, or would reasonably be expected to have, a significant adverse or material adverse impact on the safety of the Project, the environment, the public or Expansion Users.
- (j) **“Design and Construction Certification Procedure”** has the meaning given in Schedule 10 – Review Procedure.
- (k) **“Failure Category”** means the category of failure assigned to each of the Construction Period Performance Criteria set forth in Column 3 of Tables 1 to 3 in Attachment A of this Schedule 21.
- (l) **“Inspection and Test Plan”** has the meaning given in Schedule 11 – Quality Management.
- (m) **“ITP Checklist”** has the meaning given in Schedule 11 – Quality Management.
- (n) **“Major Qualifying NCR”** means a Qualifying NCR raised on a Non-Conformance that requires repair or rehabilitation of all or any portion of Completed Works because such Completed Works have, or would reasonably be expected to have, a significant adverse or material adverse impact on the quality and/or durability of the Works.
- (o) **“Medium Qualifying NCR”** means a Qualifying NCR raised on a Non-Conformance for all or any portion of Completed Works that is not a Critical Qualifying NCR or a Major Qualifying NCR.
- (p) **“Minor Qualifying NCR”** means a Qualifying NCR raised on a Non-Conformance on all or any portion of the Works that have been inspected and tested or approved by Project Co at a Witness and Hold Point, pursuant to the Inspection and Test Plan/ITP Checklist, but are not yet Completed Works.
- (q) **“NCR”** means a Non-Conformance Report.
- (r) **“Non-Conformance”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- (s) **“Non-Conformance Report”** has the meaning given in Schedule 11 – Quality Management.
- (t) **“Non-Conformance Tracking System”** has the meaning given in Schedule 11 – Quality Management.



- (u) **“Qualifying NCR”** means a Non-Conformance Report issued by Contracting Authority in accordance with Schedule 11 – Quality Management regarding any Non-Conformance discovered in the physical elements of any of the Works:
- (i) for which Project Co has continued, or has stated the intention to continue, construction of the Works:
    - (A) past the relevant Witness and Hold Point in contravention of the Inspection and Test Plan/ITP Checklist; or
    - (B) past a point where rework or repair will be required; or
  - (ii) following Project Co’s stated completion of a task or component and Project Co’s statement that the requirements of the Design and Construction Certification Procedure have been met in respect of such Works and such Works have been inspected and tested by Project Co pursuant to the Inspection and Test Plan/ITP Checklist,
- and shall include any or all of “Critical Qualifying NCR”, “Major Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.

- (v) **“Remedial Period”** means the period of time described in Column 4 of Tables 1 to 3 in Attachment A of this Schedule 21.

- (w) **“Witness and Hold Point”** has the meaning given in Schedule 11 – Quality Management.

## **2. CONSTRUCTION PERIOD PERFORMANCE CRITERIA**

### **2.1 Construction Period Quality Failures**

- (a) The Construction Period Performance Criteria are set out in Tables 1 to 3 in Attachment A of this Schedule 21. The failure by Project Co to meet any of the Construction Period Performance Criteria shall constitute a Construction Period Quality Failure.
- (b) Either Party may identify and document a Construction Period Quality Failure. Project Co shall identify and document each Construction Period Quality Failure in each Works Report as contemplated pursuant to Section 3.3 of this Schedule 21. Where Contracting Authority identifies a Construction Period Quality Failure, Contracting Authority shall provide written notification in this regard to Project Co, such written notification to provide, at a minimum, the Construction Period Performance Criteria in respect of which Project Co has failed to attain compliance with the relevant provisions of the Project Agreement, and the date that such failure was identified.
- (c) After the occurrence of a Construction Period Quality Failure, Project Co shall remediate the Construction Period Quality Failure prior to the expiration of the applicable Remedial Period set out in Column 4 of Tables 1 to 3 in Attachment A to this Schedule 21. For clarity, the occurrence of a Construction Period Quality Failure shall entitle Contracting Authority

to exercise its rights under Section 3.1 of this Schedule 21 in respect of that Construction Period Quality Failure, irrespective of the Remedial Period.

- (d) Where a single Construction Period Event gives rise to two or more Construction Period Quality Failures, then only one Construction Period Quality Failure shall apply, the specific Construction Period Quality Failure to apply being determined by Contracting Authority, in its sole discretion.
- (e) Where a single Construction Period Event gives rise to two Non-Conformance Reports issued on the same day, one of which is a Qualifying NCR, then the Qualifying NCR shall take precedence over the Non-Conformance Report that is not a Qualifying NCR, and the Construction Period Quality Failure arising from such Construction Period Event noted in such Qualifying NCR shall apply.

## **2.2 Administration of Construction Period Quality Failures and Construction Period Deductions**

- (a) Subject to Sections 2.2(b) to (e) inclusive of this Schedule 21, Contracting Authority shall use the Construction Period Performance Monitoring Report produced by Project Co pursuant to Section 3.3 of this Schedule 21 for the purposes of calculating the relevant Construction Period Deductions.
- (b) If either Party believes that there is an error or omission in a Construction Period Performance Monitoring Report, that Party shall promptly provide written notice to the other Party of such error or omission. Immediately after written notice is given pursuant to this Section 2.2(b), Project Co and Contracting Authority shall attempt to resolve or clarify the error or omission and amend the applicable Construction Period Performance Monitoring Report to their mutual satisfaction, acting reasonably. If the Parties fail to resolve or clarify the error or omission within 10 Business Days after a written notice is given pursuant to this Section 2.2(b), either Party may refer the matter to the Dispute Resolution Procedure. Subject to Sections 2.2(d) and 2.2(e) of this Schedule 21, the Parties are prohibited from giving written notice of an error or omission pursuant to this Section 2.2(b) after the expiration of 60 days after the date of the applicable Construction Period Performance Monitoring Report.
- (c) Subject to Section 2.2(e) of this Schedule 21, if Project Co fails to monitor or accurately report a Construction Period Event or a Construction Period Quality Failure then, in addition to the Construction Period Deduction to be made in respect of the relevant Construction Period Quality Failure (if any), each such failure to monitor or accurately report a Construction Period Event or a Construction Period Quality Failure shall be deemed to be a separate and additional Construction Period Quality Failure designated as a Failure Category of “Minor” as set out in Table 3 of Attachment A of this Schedule 21.
- (d) In the event that any inspection or investigation by Contracting Authority pursuant to the Project Agreement reveals new errors, omissions or failures of the type referred to in Section 2.2(b) or Section 2.2(c) of this Schedule 21, such errors, omissions or failures shall

be dealt with in accordance with Section 2.2(b) or Section 2.2(c) of this Schedule 21, as applicable, and, for clarity, Contracting Authority may, in its sole discretion, and subject to Sections 3.1(c), (d) and (e) of this Schedule 21, apply Construction Period Deductions in respect of any Construction Period Quality Failures discovered pursuant to this Section 2.2(d) in the manner set out in this Schedule 21. Any such Construction Period Deductions shall be recorded in respect of the payment period in which the relevant matters were revealed by Contracting Authority's investigations. For clarity, the 60 day deadline set out in Section 2.2(b) of this Schedule 21 shall not apply to errors, omissions or failures revealed pursuant to this Section 2.2(d).

- (e) For the purposes of Sections 2.2(b), (c) and (d) of this Schedule 21, if Project Co or a Project Co Party has engaged in fraudulent action or inaction, deliberate misrepresentation, or gross misconduct or incompetence:
- (i) in the preparation of the Construction Period Performance Monitoring Report; or
  - (ii) in carrying out the Works resulting in one or more Construction Period Quality Failures;
- then
- (iii) the 60 day deadline set out in Section 2.2(b) of this Schedule 21 shall not apply; and
  - (iv) the failure to monitor or accurately report a Construction Period Event or a Construction Period Quality Failure shall be deemed to be a separate and additional Construction Period Quality Failure designated as a Failure Category of "Critical" as set out in Table 3 of Attachment A of this Schedule 21.
- (f) For clarity, where Construction Period Quality Failures are based upon Non-Conformance Reports or Qualifying NCRs, no Construction Period Deductions shall be made for a Non-Conformance Report which is subject to an objection by Project Co or the Dispute Resolution Procedure pursuant to Section 7.1 of Schedule 11 – Quality Management. Where the objection is subsequently not sustained, then the Construction Period Quality Failure shall be deemed to have occurred 15 Business Days following the date that the Non-Conformance Report received 'open' status and a Remedial Period of 20 Business Days shall apply from that point.

### 2.3 Disputing a Construction Period Quality Failure

- (a) Either Party may object to the assignment of a Construction Period Quality Failure by delivery of a written notice of objection in this regard (a "**CPQF Objection Notice**") to the other Party within 5 Business Days of receiving notice of such Construction Period Quality Failure pursuant to Section 2.1(b) of this Schedule 21. If the objection set forth in the CPQF Objection Notice has not been resolved by mutual agreement between the Parties within 5 Business Days of the delivery of the subject CPQF Objection Notice, then either

Party may refer the matter to the Dispute Resolution Procedure for determination, except in the circumstances set forth in Section 2.3(b) of this Schedule 21.

- (b) Where a CPQF Objection Notice has been issued regarding a Construction Period Quality Failure designated as a Failure Category of “Minor” in Table 1, 2 or 3 of Attachment A of this Schedule 21 and such objection has not been resolved by mutual agreement between Contracting Authority and Project Co within 5 Business Days of the delivery of such CPQF Objection Notice, the Parties agree that the determination as to whether or not a Construction Period Quality Failure has occurred shall be made by the Independent Certifier, and the decision of the Independent Certifier in this regard shall be final and binding on the Parties, notwithstanding the provisions of Section 4.4 of Schedule 27 – Dispute Resolution Procedure. The Parties agree that the provisions of Section 4.3 of Schedule 27 – Dispute Resolution Procedure shall apply for the purposes of Section 2.3 of this Schedule 21.

### **3. CONSTRUCTION PERIOD DEDUCTIONS**

#### **3.1 Contracting Authority Entitlement to Make Construction Period Deductions**

- (a) If, at any time during the Construction Period, Project Co commits a Construction Period Quality Failure, Contracting Authority may, in its sole discretion, and subject to Sections 3.1(c), (d) and (e) of this Schedule 21, make a Construction Period Deduction from the Substantial Completion Payment.
- (b) If, prior to the expiration of the applicable Remedial Period, Project Co demonstrates, to the satisfaction of Contracting Authority, that Project Co has remedied the Construction Period Quality Failure, no further Construction Period Deduction shall be applied in respect of that Construction Period Quality Failure. If Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period, Contracting Authority, may, in its sole discretion, and subject to Sections 3.1(c), (d) and (e) of this Schedule 21, apply a further Construction Period Deduction and a further Remedial Period (or Remedial Periods) of the same duration shall be deemed to have commenced. Contracting Authority may, in its sole discretion, and subject to Sections 3.1(c), (d) and (e) of this Schedule 21, apply the applicable Construction Period Deduction each time Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period until such time as Project Co demonstrates, to the satisfaction of Contracting Authority, that it has remediated the applicable Construction Period Quality Failure. If there is no Remedial Period specified for a Construction Period Quality Failure in Column 4 of Table 1, Table 2 or Table 3 of Attachment A of this Schedule 21 (as indicated by an “N/A” in such column), Contracting Authority may, in its sole discretion, and subject to Sections 3.1(c), (d) and (e) of this Schedule 21, apply the applicable Construction Period Deduction each time the applicable Construction Period Quality Failure occurs.
- (c) All Construction Period Deductions shall be:

- (i) calculated in accordance with Section 3.2 of this Schedule 21;
  - (ii) documented in the applicable Construction Period Performance Monitoring Report prepared by Project Co pursuant to Section 3.3 of this Schedule 21; and
  - (iii) accrued up to (and including) the Substantial Completion Date and deducted from the Substantial Completion Payment as contemplated pursuant to Section 4.21 of the Project Agreement.
- (d) Subject to Project Co meeting its obligations set out in Sections 31.2 and 31.3 of the Project Agreement, Contracting Authority shall not be entitled to make a Construction Period Deduction in respect of any Construction Period Quality Failure that has arisen from a Non-Conformance that has been directly caused by one or more of the events referred to in Section 31.1(a) of the Project Agreement, whether or not such event constitutes a Delay Event.
- (e) The maximum aggregate amount of all Construction Period Deductions that Contracting Authority can make pursuant to this Section 3.1 shall not exceed \$[REDACTED].
- (f) For clarity:
- (i) Contracting Authority shall automatically be entitled to set-off the aggregate amount of all Construction Period Deductions accrued up to (and including) the Substantial Completion Date against the Substantial Completion Payment as set out in Section 4.21 of the Project Agreement, all in accordance with Section 4.11 of the Project Agreement; and
  - (ii) the provisions of Sections 4.12 and 27.2 of the Project Agreement shall continue to apply in respect of any Construction Period Deduction made by Contracting Authority pursuant to this Section 3.1.

### 3.2 Calculation of the Construction Period Deduction

- (a) The amount of the Construction Period Deduction in respect of a Construction Period Quality Failure shall be as follows:
- (i) in the case of a Construction Period Quality Failure designated as a Failure Category of “Minor” in Attachment A of this Schedule 21, the first and any subsequent deductions shall be the sum of \$[REDACTED];
  - (ii) in the case of a Construction Period Quality Failure designated as a Failure Category of “Medium” in Attachment A of this Schedule 21, the first and any subsequent deductions shall be the sum of \$[REDACTED];
  - (iii) in the case of a Construction Period Quality Failure designated as a Failure Category of “Major” in Attachment A of this Schedule 21, the first and any subsequent deductions shall be the sum of \$[REDACTED]; and

- (iv) in the case of a Construction Period Quality Failure designated as a Failure Category of “Critical” in Attachment A of this Schedule 21, the first and any subsequent deductions shall be the sum of \$[REDACTED].

### **3.3 Submission and Review of Project Co Construction Period Performance Monitoring Report**

- (a) Project Co shall prepare, complete and deliver the Construction Period Performance Monitoring Report, as part of the Works Report, to Contracting Authority.
- (b) The Construction Period Performance Monitoring Report shall contain:
  - (i) the number of Construction Period Quality Failures for each Failure Category occurring, together with a description of each Construction Period Event applicable to the subject Construction Period Quality Failure;
  - (ii) the dollar amount of each Construction Period Deduction for each Failure Category, and the aggregate value of all Construction Period Deductions for all Failure Categories;
  - (iii) the cumulative dollar amount of all Construction Period Deductions for each Failure Category, together with the cumulative value of all Construction Period Deductions, in each case, accrued since Financial Close;
  - (iv) a summary setting forth a statistical trends and historical trends analysis since Financial Close of the number of Construction Period Quality Failures and Construction Period Deductions in each Failure Category; and
  - (v) such other information and analysis as may be requested from time to time by Contracting Authority.

**ATTACHMENT A**

**CONSTRUCTION PERIOD PERFORMANCE CRITERIA**

**[REDACTED]**

**ATTACHMENT B****SUBMITTALS REFERENCE****Table B-1: Submittals Reference**

	<b>Reference</b>	<b>Requirement to be met</b>
1.	Schedule 11 Appendices B-F	The following submittal shall be in accordance with the scheduled date from the Baseline Works Schedule: Design Quality Management Plan, Construction Quality Management Plan, Independent Quality Assurance Firm Management Plan, Traffic Quality Management Plan, and Environmental Quality Management Plan.
2.	Schedule 10  Clause 2.1 (c) and Attachment 2	The following submittal shall be in accordance with the scheduled date from the Baseline Works Schedule: Design Certificates.
3.	Schedule 10  Clause 2.1 (d) and Attachment 3	The following submittal shall be in accordance with the scheduled date from the Baseline Works Schedule: Construction Certificates.
4.	Schedule 15-2 Part 2 Section 7.5	The following submittal shall be in accordance with the scheduled date from the Drainage and Erosion Control Design Criteria: Erosion and Sediment Control Plan.
5.	Schedule 15-2 Part 2 Section 14.1 (e)	The following submittal shall be in accordance with the scheduled date: Haul Route Plan.
6.	Schedule 15-2 Part 2 Section 10.5(a)	The following review and submittals shall be undertaken within the scheduled date: Design Safety Review.
7.	Schedule 15-2 Part 2 Section 1.6 (a)(b)	The following review shall be undertaken within the scheduled date: Final Fencing plan.
8.	Schedule 15-2 Part 2 Section 7.3 (a)	The following review shall be undertaken within the scheduled date: Drainage, hydrology, hydraulics and stormwater management report.
9.	Schedule 15-2 Part 2 Article 8	The following review shall be undertaken within the scheduled date: Temporary/Permanent Signing Plan and temporary/permanent signing table Temporary/Permanent Pavement Marking Plan.



	Reference	Requirement to be met
10.	Schedule 15-2 Part 2 Section 13.1 and Schedule 36	The following submittal shall be in accordance with the scheduled date: Health and Safety Management Plan.
11.	Schedule 17 Table 3.5	The following submittal shall be in accordance with the scheduled date from the Environmental Plans and Reports and Submission: All deliverables identified in Table 3.5 of Schedule 17 (Environmental Obligations).
12.	Schedule 18 Section 2.10	The following submittal shall be in accordance with the scheduled date from the Communications Works Submittals: All deliverables identified in Section 2.10 of Schedule 18 (Communications).

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**SCHEDULE 22****VARIATION PROCEDURE****1. VARIATIONS****1.1 Definitions**

(a) In this Schedule 22, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 22) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (i) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
- (ii) “**Estimate**” has the meaning given in Section 1.4(a).
- (iii) “**Overhead**” has the meaning given in Appendix C of this Schedule 22.
- (iv) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 22.
- (v) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a).
- (vi) “**Reduced Works Compensation Amount**” has the meaning given in Section 1.11(a).
- (vii) “**Reduced Works Variation**” has the meaning given in Section 1.11(a).
- (viii) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
- (ix) “**Variation Ancillary Agreement**” means any written agreement between the Parties that is directly related and in addition to a Variation Confirmation and is necessary to implement the Variation, including to amend the Project Agreement. Each Variation Ancillary Agreement shall be attached to the related Variation Confirmation in accordance with Section 1.7(a)(ii)(A).
- (x) “**Variation Confirmation**” has the meaning given in Section 1.7(a)(ii).
- (xi) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a Variation pending the execution and delivery of a Variation Confirmation for that Variation.
- (xii) “**Variation Enquiry**” has the meaning given in Section 1.3(a).

**1.2 General**

(a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that Contracting Authority shall not be permitted to withdraw a Variation Enquiry with respect to those circumstances specified in the Project Agreement for which Contracting Authority is obligated to proceed with a Variation.

- (b) Contracting Authority shall be obligated to proceed with a Variation in certain circumstances specified in the Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) The only payment or compensation payable by Contracting Authority to Project Co in connection with any Variation shall be the sum of the following amounts:
  - (i) the Direct Cost of such Variation; plus
  - (ii) Overhead and Profit, other than in the case of Pandemic and Epidemic Change in Law Compensation for which only Overhead shall be included.
- (d) Project Co will not be entitled to any payment, compensation, extension of time or any other relief from the performance of Project Co's obligations under the Project Agreement for a Variation, except to the extent provided in a Variation Confirmation or a Variation Directive in accordance with this Schedule 22.
- (e) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss the implementation of any Variation or Variations generally, including with respect to the administration and pricing of Variations.

### 1.3 Variation Enquiry

- (a) Subject to Section 1.12(b)(ii), if Contracting Authority proposes or is obligated pursuant to the terms of the Project Agreement or Applicable Law to initiate a Variation it shall deliver to the Project Co Representative a Notice of the proposed Variation (a "**Variation Enquiry**").
- (b) A Variation Enquiry shall:
  - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require Project Co to incur any Direct Cost, state whether, subject to Section 1.10, Contracting Authority intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof;
  - (iii) provide a preliminary indication of any provisions of the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) and any Variation Ancillary Agreements that may be necessary to accommodate the Variation; and
  - (iv) if the proposed Variation is a Reduced Works Variation, include (A) a request for Project Co to provide the Reduced Works Compensation Amount; and (B) either Contracting Authority's proposed method of being compensated by Project Co pursuant to Section 1.11(b) or a request for Project Co to provide such method for Contracting Authority's consideration.

**1.4 Delivery of Estimate**

- (a) Subject to Section 1.4(b), as soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry (or such longer period as the Parties agree acting reasonably), Project Co shall, notwithstanding the issuance of any subsequent Variation Directive related to such Variation Enquiry, deliver its detailed breakdown, estimate and other information in respect of such Variation prepared in accordance with and meeting the requirements of Section 1.6 and in the form prescribed by Contracting Authority, acting reasonably (an “**Estimate**”).
- (b) In the event that a Variation Directive is issued before Project Co delivers an Estimate in respect of a Variation, Project Co shall deliver such Estimate as soon as practicable and in any event within 15 Business Days after Contracting Authority’s issuance of such Variation Directive (or such longer period as the Parties agree acting reasonably).

**1.5 Project Co Grounds for Objection**

- (a) Project Co may only refuse to deliver an Estimate or implement a Variation Directive if (I), with regards to the delivery of an Estimate, Project Co can demonstrate to Contracting Authority’s satisfaction, acting reasonably, before the expiry of the period for the delivery of an Estimate specified or agreed pursuant to Section 1.4(a), or (II), with regards to the implementation of a Variation Directive, Project Co can promptly demonstrate to Contracting Authority’s satisfaction, acting reasonably, that:
  - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe Applicable Law;
    - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Works, and any such Permit, Licence, Approval and Agreement 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 Works, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable;
  - (iii) the proposed Variation would have a material and adverse effect on the performance of the Works (except those Works which have been specified as requiring amendment in the Variation Enquiry or Variation Directive) in a manner not compensated pursuant to this Schedule 22;
  - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
  - (v) Contracting Authority does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;

- (vi) the Variation would, if implemented, result in a change in the essential nature of the Expansion Infrastructure;
  - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
  - (viii) if applicable, the Variation Directive fails to include adequate information therein to enable Project Co to promptly proceed to implement the Variation or prepare an Estimate in respect thereof; or
  - (ix) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate or implement a Variation Directive on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to the Contracting Authority Representative a Notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

## 1.6 Estimate Requirements

- (a) Unless Contracting Authority provides Notice to the Project Co Representative that it only requires certain specific information, each Estimate shall include the following information, sufficient to demonstrate to Contracting Authority's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
  - (ii) the detailed breakdown including the item, unit cost, unit rates, quantities and the itemized amount and total amount;
  - (iii) any schedule impact on the provision of the Expansion Infrastructure and the completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations). During the performance of the Works, such information shall include any impact on the Scheduled Substantial Completion Date and on the Schedule Final Completion Date, together with a critical path schedule analysis detailing and demonstrating such impact;
  - (iv) any impact on the performance of the Works and any other impact on or required relief from the Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
  - (v) without limiting the generality of Sections 1.6(a)(iii) and (iv), whether the implementation of such Variation would constitute a Delay Event pursuant to Section 31.1(a)(i) of the Project Agreement;
  - (vi) any amendments to the Project Agreement or any Project Document and any Variation Ancillary Agreements required as a consequence of the Variation, the objective of such

amendments and such Variation Ancillary Agreements being to ensure that (save for the obligation of Contracting Authority to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;

- (vii) any impact on the Direct Cost to Project Co and each relevant Subcontractor of the proposed Variation, including all of the costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
- (viii) either, subject to Section 1.9:
  - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
  - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (ix) subject to Section 1.10, if the proposed Variation is not a Reduced Works Variation, Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (x) any Permits, Licences, Approvals and Agreements that must be obtained, amended, renewed or replaced for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or Contracting Authority, as applicable, must obtain, amend, renew or replace such Permits, Licences, Approvals and Agreements for the Estimate to remain valid;
- (xi) the proposed methods of certification of any construction or operational aspect of the Works required by the Variation if not covered by the provisions of the Project Agreement; and
- (xii) if the proposed Variation is a Reduced Works Variation,
  - (A) the proposed Reduced Works Compensation Amount; and
  - (B) either Project Co's
    - 1. confirmation as to Contracting Authority's proposed method of being compensated by Project Co for the Reduced Works Variation provided pursuant to Section 1.3(b)(iv); or
    - 2. alternative proposal to Contracting Authority's proposed method, or Project Co's proposal for such method for Contracting Authority's consideration pursuant to Section 1.3(b)(iv),

in either case together with all relevant supporting calculations showing the preliminary indication of the potential impacts, if any, on the affected payments described in Section 1.11(b), with such amounts calculated by reference to the relevant parts of the Financial Model to demonstrate the impacts of the proposed Variation,

in each case, together with such supporting information, details, calculations and justifications as is reasonably required.

- (b) With respect to each Estimate and proposed Variation, Project Co shall:
- (i) subject to Sections 1.6(c) and 1.6(e), use and oblige each Subcontractor to use commercially reasonable efforts, including the use of competitive quotes or tenders, to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) except as otherwise set out in this Schedule 22, limit all costs of Project Co and each Subcontractor payable by Contracting Authority pursuant to this Schedule 22 to the Direct Cost described in Appendix A of this Schedule 22, which shall be quantifiable and supported by evidence and proper documentation in accordance with Section 1.2(vii) of such Appendix;
  - (iii) calculate (A) Overhead and Profit in accordance with Appendix B of this Schedule 22 in respect of all Variations other than with regards to Variations providing Pandemic and Epidemic Change in Law Compensation, and (B) Overhead in accordance with Appendix C of this Schedule 22 with regards to Variations providing Pandemic and Epidemic Change in Law Compensation;
  - (iv) ensure that all costs of providing the Works reflect:
    - (A) labour and material rates that comply with the applicable provisions of Appendix A of this Schedule 22 and otherwise apply in the open market to providers of services similar to those required by the Variation;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
    - (C) any and all changes in risk allocation;
  - (v) take into account and apply the full amount of any and all costs related to expenditures that have been or will be reduced or avoided as a result of the Variation, including in respect of all reduced or avoided costs related to Capital Expenditures and all applicable amounts for overhead and profit that were anticipated to be incurred but for the Variation. All such reductions in and avoidance of costs shall fully be to the account and for the benefit of Contracting Authority;
  - (vi) mitigate and cause each relevant Subcontractor to mitigate the impact of the Variation, including on the Baseline Works Schedule, the performance of the Works, the expected usage and cost of utilities, and the Direct Cost to be incurred; and

- (vii) 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 Section 1.6(b).
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the Variation, including, at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Variation.
- (d) As soon as practicable, and in any event not more than 15 Business Days after Contracting Authority receives an Estimate (or such longer period as the Parties agree acting reasonably), 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, and on any Variation Ancillary Agreements.
- (e) At the request of Contracting Authority, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority, to competitively tender any contract in relation to the proposed Variation, Project Co shall seek and evaluate competitive tenders for the proposed Variation, including in accordance with such Applicable Law or policy.
- (f) Contracting Authority may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification (or such longer period as the Parties agree acting reasonably), notify the Contracting Authority Representative in writing of any resulting changes to the Estimate.
- (g) The Parties shall use reasonable commercial efforts to agree on the Estimate and any Variation Ancillary Agreements within a reasonable amount of time after they have discussed and sought to agree on the Estimate and any such Variation Ancillary Agreements pursuant to Section 1.6(d). Subject to Section 1.12(b)(v), if the Parties cannot agree on an Estimate or any Variation Ancillary Agreement after the expiry of such reasonable amount of time, then at any time
  - (i) either Party may refer any Dispute in respect of the Estimate or Variation Ancillary Agreement for determination in accordance with Schedule 27 – Dispute Resolution Procedure; or
  - (ii) Project Co may provide a request in writing to the Contracting Authority Representative for Contracting Authority to confirm that the Variation Enquiry has not been withdrawn, which Contracting Authority shall respond to in writing within five Business Days either, in Contracting Authority's sole discretion, confirming that the Variation Enquiry has not been withdrawn or, subject to Section 1.7(e), withdrawing the Variation Enquiry.



- (h) Subject to Sections 1.2(a) and 1.7(e), Contracting Authority agrees that Contracting Authority shall promptly provide Notice in writing to the Project Co Representative withdrawing a Variation Enquiry if Contracting Authority, in its sole discretion, determines that it no longer wishes Project Co to carry out and implement a Variation.

### 1.7 Variation Confirmation

- (a) As soon as possible after the later of the date the Estimate and any Variation Ancillary Agreements were either agreed to or the date any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall either:
- (i) subject to Section 1.2(b) and Section 1.7(e), withdraw the Variation Enquiry by Notice to the Project Co Representative; or
  - (ii) issue a written confirmation of the Estimate signed by Contracting Authority (the “**Variation Confirmation**”), which
    - (A) shall include:
      - 1. any agreed modifications to such Estimate or any modifications resulting from the determination of a Dispute in respect thereof;
      - 2. all information and attach any Variation Ancillary Agreements and other documents, necessary to implement the Variation, including, if and to the extent applicable, to extend any time period set out in or required by the Project Agreement, amend the Project Agreement, provide for payment to Project Co as set out in Section 1.10, or provide relief to Project Co from the provisions of the Project Agreement;
      - 3. without limiting the generality of Section 1.7(a)(ii)(A)2 and if and to the extent applicable, all information and attach any Variation Ancillary Agreements and other documents necessary to effect a Delay Event pursuant to Section 31.1(a)(i) of the Project Agreement; and
      - 4. a full and final release provided by Project Co to Contracting Authority in respect of (I) any claims or demands from Project Co for any payment, compensation, extension of time or any other relief from the performance of Project Co’s obligations under the Project Agreement for the implementation of the Variation and (II) the events and circumstances giving rise to the Variation, except to the extent expressly provided in the Variation Confirmation, or attach a Variation Ancillary Agreement that includes such full and final release; and
    - (B) may be subject to Project Co obtaining financing pursuant to Section 1.8.
- (b) Within five Business Days following Project Co’s receipt of a Variation Confirmation issued pursuant to Section 1.7(a)(ii), Project Co shall execute and deliver a copy of such executed Variation Confirmation and any Variation Ancillary Agreements to Contracting Authority.

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- (c) Subject to Section 1.12, upon the Variation Confirmation and any Variation Ancillary Agreements being issued, executed and delivered, and if applicable upon Project Co obtaining financing pursuant to Section 1.8:
- (i) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.7(a)(ii)(A)2, all provisions of the Project Agreement applicable to the Works shall apply to the Works as thereby changed; and
  - (ii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.7(a)(ii)(A)2.
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to Contracting Authority in its sole discretion; or
  - (ii) Contracting Authority in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation and any Variation Ancillary Agreements have been issued, executed and delivered:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at Contracting Authority's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (ii) Contracting Authority may at any time withdraw a Variation Enquiry and, subject to Section 1.7(f), Contracting Authority shall not be obligated to Project Co in respect of a Variation until such time as Contracting Authority in its sole discretion issues a Variation Confirmation, and, if applicable, Project Co has obtained the financing requested by Contracting Authority or Contracting Authority has waived such requirement,
- provided that Contracting Authority may not withdraw a Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of the Project Agreement to proceed with a Variation. In such circumstances, Schedule 27 – Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.
- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, Contracting Authority shall reimburse Project Co for the Direct Cost reasonably and properly incurred by Project Co in connection with preparing the Estimate.

## 1.8 Financing

- (a) Subject to Section 1.9, if Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Contracting Authority requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co and Contracting Authority, provided

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that Project Co shall not be required to seek debt financing from any source other than the existing Lenders.

- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Contracting Authority within 60 days of the date that Contracting Authority issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation and Variation Ancillary Agreements subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (c) Subject to Section 1.9, if Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Contracting Authority with details of such financing, and Contracting Authority shall, in its sole discretion, determine whether Project Co should proceed with such financing. If Contracting Authority determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation and Variation Ancillary Agreements subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (d) Subject to Section 1.9, Contracting Authority may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation and Variation Ancillary Agreements subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (e) If Contracting Authority waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d) then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Contracting Authority shall pay for the Variation as provided for in Section 1.10(a)(ii).

### **1.9 Increase or Decrease in the Cost of the Financing**

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. Project Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to Contracting Authority, together with a certificate of the Lenders' Agent addressed to Project Co (which will expressly provide that the certificate may be relied upon by Contracting Authority) verifying such calculations. Contracting Authority shall, in its sole discretion, within 5 Business Days of receiving such certificate from the Lenders' Agent, select its preferred option by providing written notice to Project Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lending Agreements, and without

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regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.

- (b) If a Variation gives rise to a net benefit to Project Co through a reduction of the Cost of the Financing, then Project Co shall pay any net benefit received by Project Co to Contracting Authority.

### 1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by Contracting Authority, a Guaranteed Price adjustment or payment by Contracting Authority for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) if there is an increase or decrease in the Cost of the Financing as a result of the Variation in accordance with Section 1.9, the Guaranteed Price shall be adjusted as set out in the Variation Confirmation; or
- (ii) payment for the Variation as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
- (A) Contracting Authority shall make such payment in lump sum amounts based on a payment schedule agreed by Contracting Authority and Project Co, acting reasonably, to reflect the amount and timing of the Direct Cost to be incurred by Project Co in carrying out the Variation to the extent borne by Contracting Authority; and
- (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence and proper documentation confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event Contracting Authority and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by Contracting Authority (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be paid by Contracting Authority in time to make payments to that third party in accordance with its contract with Project Co.

For greater certainty, (I) the Substantial Completion Payment shall only be adjusted as a result of a Variation if the Guaranteed Price is adjusted pursuant to Section 1.10(a)(i), and (II) neither the Substantial Completion Payment nor the Guaranteed Price shall be adjusted as a result of the Variation if Project Co is paid pursuant to Section 1.10(a)(ii).

- (b) Contracting Authority shall make payment to Project Co within 20 Business Days of receipt by Contracting Authority of invoices presented to Contracting Authority in accordance with the agreed payment schedule together with evidence and proper documentation satisfactory to Contracting Authority to support such payment, including as set out in Section 1.10(a)(ii)(B).
- (c) Payments by Contracting Authority in respect of a Variation shall be subject to any applicable provisions of the *Construction Act* (Ontario), including any applicable payment and holdback provisions.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, Contracting Authority shall provide to Project Co copies of any consent or approval issued by Contracting Authority in connection with a proposed Variation (including from Contracting Authority’s board of directors).

### 1.11 Reduction in Works

- (a) If a Variation involves any reduction in the Works (each is a “**Reduced Works Variation**”) which results in savings in the Direct Cost to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under the Project Agreement in an amount equal to such reduction in the Direct Cost (the “**Reduced Works Compensation Amount**”).
- (b) Unless otherwise agreed by the Parties, Project Co shall compensate Contracting Authority for any Reduced Works Variation:
  - (i) by way of a reduction in the Substantial Completion Payment; or
  - (ii) by way of a reduction of, or in accordance with Section 4.11 of the Project Agreement a set off against, any other payment due to Project Co pursuant to the terms of the Project Agreement,

in an aggregate amount equal to the Reduced Works Compensation Amount.

### 1.12 Variation Directive

- (a) In the event that
  - (i) Contracting Authority, in its sole discretion, requires a Variation to be implemented prior to the issuance of a Variation Enquiry, an Estimate or a Variation Confirmation; or
  - (ii) an Estimate or a Variation Confirmation and any Variation Ancillary Agreements are not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto,

Contracting Authority may issue a Variation Directive, and, following receipt of the Variation Directive, Project Co shall, subject to Section 1.5, promptly proceed to implement the Variation.

- (b) Without limiting Project Co’s obligation to promptly implement each Variation Directive:

- (i) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after the commencement of the implementation of the Variation;
- (ii) in the event that Contracting Authority did not deliver a Variation Enquiry in respect of such Variation before the Variation Directive was issued, Contracting Authority shall not be required to deliver such Variation Enquiry;
- (iii) in the event that Project Co did not deliver an Estimate in respect of such Variation before the Variation Directive was issued, Project Co shall deliver such Estimate in accordance with the time period set out in Section 1.4(b);
- (iv) until an Estimate in respect of such Variation is agreed to or any Dispute in respect thereof is determined in accordance with Schedule 27 – Dispute Resolution Procedure, unless otherwise agreed by the Parties, the Independent Certifier shall, acting reasonably, initially determine the valuation of such Variation in accordance with Appendices A and B of this Schedule 22;
- (v) Project Co shall, subject to Section 1.5, commence the implementation of and shall continue to implement such Variation notwithstanding any Dispute in respect of the valuation of all or any part of such Variation or any time extension required in connection with such Variation (including any Dispute related to the Estimate in respect of such Variation). No such Dispute shall justify Project Co’s failure or refusal to commence or continue to implement such Variation. Only concurrently with or after complying with such Variation shall Project Co be entitled to refer any such Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. In the event that Project Co fails or refuses to commence or continue to implement such Variation as a result of any such Dispute, the Parties agree that Project Co shall not be entitled to any schedule extension in respect of the specific period of time in which such failure or refusal continues even if the matter in Dispute is determined in favor of Project Co pursuant to Schedule 27 – Dispute Resolution Procedure.
- (vi) Contracting Authority shall pay Project Co for all Variations implemented by way of a Variation Directive as provided for in Section 1.10 and, if applicable, Section 1.12(b)(iv).

## 2. PROJECT CO VARIATIONS

### 2.1 General

- (a) Project Co shall deliver to the Contracting Authority Representative a Notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

### 2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
  - (i) set out details of the proposed Variation in sufficient detail to enable Contracting Authority to evaluate it in full;
  - (ii) specify Project Co’s reasons for proposing the Variation;

- (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Contracting Authority; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If Contracting Authority, in its sole discretion, elects to consider the Variation proposed by Project Co, Contracting Authority may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse Contracting Authority for all out-of-pocket costs and expenses reasonably incurred by Contracting Authority in connection with Contracting Authority's consideration of any Variation proposed by Project Co pursuant to this Section 2 that is not with respect to those circumstances specified in the Project Agreement for which Contracting Authority is obligated to proceed with a Variation, including legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

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**APPENDIX A****CALCULATION OF DIRECT COST****1. DIRECT COST**

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Project Co and by each relevant Subcontractor to the extent that each such amount specifically relates to, and is attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and is a new direct incremental cost that would not otherwise have been paid or incurred by, as applicable, Project Co or the relevant Subcontractor but for such Variation:

- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Works on the Site;
- (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the office on the Site in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vi) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (vii) deposits lost;
- (viii) except as otherwise set out in the Project Agreement, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor, other than the Construction Contractor and any other entity not at arms-length from Project Co;
- (ix) the reasonable fees and disbursements of the Lenders’ Consultant and the external technical consultants and external legal advisors of Project Co and its Subcontractors;



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- (x) the cost of third party quality assurance required by Contracting Authority, such as independent inspection and testing services;
  - (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
  - (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of Contracting Authority to pay HST payable by it under the Project Agreement), but excluding:
    - (A) HST;
    - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
    - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
    - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
    - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
  - (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Project Agreement;
  - (xiv) termination payments which are required under Applicable Law to be made to employees of Project Co or any Subcontractor reasonably and properly incurred by Project Co arising as a direct result of any Reduced Works Variation, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
  - (xv) the cost of debt financing provided by the Lenders including all additional financing costs related to any delay caused by the implementation of the Variation;
  - (xvi) the cost of competitively tendering any contract in relation to the proposed Variation that is required by Contracting Authority, including as a result of any Applicable Law or any policy applicable to Contracting Authority;
  - (xvii) the cost of any additional insurance or performance security required or approved by Contracting Authority; and
  - (xviii) the cost of obtaining all Project Co Permits, Licences, Approvals and Agreements.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of

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- (A) all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred; and
  - (B) all costs described in Section 1.6(b)(v);
  - (ii) the amount paid for materials, products, supplies and equipment incorporated into the Works as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
  - (iii) with regards to each amount described in Sections 1.11.1(ii) to 1.1(iv) of this Appendix A for salaried personnel, the per hour cost incurred by any Subcontractor for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours, provided that, in accordance with the preamble to Section 1.1, no such amount shall be a Direct Cost if it does not relate to or is not attributable to a new incremental direct cost of the Subcontractor paid or incurred by it as a result of the specific work or services performed by such salaried personnel to implement the Variation;
  - (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in South Western Ontario;
  - (v) any amounts paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in South Western Ontario;
  - (vi) notwithstanding anything to the contrary in this Schedule 22, the Direct Cost shall not include:
    - (A) any cost incurred due to the failure on the part of Project Co or any Project Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the Works (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Subcontractor);
    - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing asset management, personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor;
    - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, general accounting and estimation, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly involved in the implementation of the Variation, and any other overhead cost or expense;
    - (D) the cost of travel and subsistence expenses; or
    - (E) any costs or expenses associated with the participation of Project Co and any Subcontractor in the meetings described in Section 1.2(e) of this Schedule 22; and

- (vii) the Direct Cost must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by Contracting Authority. Proper documentation shall include unit rates or prices and quantities for all items (including labour and materials) and evidence of any relevant salaries, wages, benefits, statutory remittances and holidays costs for personnel, that comprise the Direct Cost, including for all work completed by any Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by Contracting Authority in writing.

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**APPENDIX B****CALCULATION OF OVERHEAD AND PROFIT**

- (a) **“Overhead and Profit”** means, for each of rows 1, 2 and 3 in Table A – Applicable Overhead and Profit, the product of:
- (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by
  - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, (i) the percentages applicable to Overhead and Profit shall not be determined based on any component or components of the subject Variation; and (ii) only one column in Table A – Applicable Overhead and Profit shall apply to each Variation.
- (c) Project Co and the Construction Contractor shall charge no more than the amount of Overhead and Profit calculated in accordance with Appendix B of this Schedule 22.
- (d) No amount for Overhead and Profit shall be charged on any other amount of Overhead and Profit.
- (e) No other methodology for the calculation of Overhead and Profit shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead and Profit payable in accordance with this Schedule 22 is intended to and shall be deemed to compensate Project Co and the Construction Contractor for all costs and expenses incurred in connection with a Variation other than the Direct Cost, including all overhead, profit, office administration and the other amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22.

**TABLE A**  
**APPLICABLE OVERHEAD AND PROFIT**

Entity	Overhead and Profit		
	For a Variation with a Direct Cost under \$[REDACTED]	For a Variation with a Direct Cost of between \$[REDACTED] and \$[REDACTED]	For a Variation with a Direct Cost over \$[REDACTED]
<b>1. Project Co (Own Work)</b>	[REDACTED] %	[REDACTED] %	[REDACTED] %
<b>2. Construction Contractor (Own Work)</b>	[REDACTED] %	[REDACTED] %	[REDACTED] %
<b>3. Construction Contractor (Subcontracted Work)</b>	[REDACTED] %	[REDACTED] %	[REDACTED] %

## APPENDIX C

CALCULATION OF OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC  
CHANGE IN LAW COMPENSATION

- (a) “**Overhead**” means, for each of rows 1, 2 and 3 in Table B – Applicable Overhead for Purposes of Pandemic and Epidemic Change in Law Compensation, the product of:
- (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by,
  - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, (i) the percentages applicable to Overhead shall not be determined based on any component or components of the subject Variation; and (ii) only one column in Table B – Applicable Overhead for Purposes of Pandemic and Epidemic Change in Law Compensation shall apply to each Variation.
- (c) Project Co and the Construction Contractor shall charge no more than the amount of Overhead calculated in accordance with Appendix C of this Schedule 22.
- (d) No amount for Overhead shall be charged on any other amount of Overhead.
- (e) No other methodology for the calculation of Overhead shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead payable in accordance with this Schedule 22 is intended to and shall be deemed to compensate Project Co and the Construction Contractor for all costs and expenses incurred in connection with a Variation as the result of a Pandemic and Epidemic Change in Law other than the Direct Cost, including all overhead, office administration and the other amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22, and excluding profit.

**TABLE B**

**APPLICABLE OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC CHANGE IN  
LAW COMPENSATION**

Entity	Overhead		
	For a Variation with a Direct Cost under \$[REDACTED]	For a Variation with a Direct Cost of between \$[REDACTED] and \$[REDACTED]	For a Variation with a Direct Cost over \$[REDACTED]
<b>1. Project Co (Own Work)</b>	[REDACTED] %	[REDACTED] %	[REDACTED] %
<b>2. Construction Contractor (Own Work)</b>	[REDACTED] %	[REDACTED] %	[REDACTED] %
<b>3. Construction Contractor (Subcontracted Work)</b>	[REDACTED] %	[REDACTED] %	[REDACTED] %

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**SCHEDULE 23****COMPENSATION ON TERMINATION****1. DEFINITIONS****1.1 Definitions**

The following terms shall have the following meanings:

- (a) “**Contracting Authority Default Termination Sum**” has the meaning given in Section 2.1(b) of this Schedule 23.
- (b) “**Employee Termination Payments**” means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
  - (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
  - (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (c) “**Invoice Date**” means the date that is the later of:
  - (i) the date on which Contracting Authority receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Section 5.1(a) of this Schedule 23.
- (d) “**Junior Debt Amount**” has the meaning set out in the Project Agreement.
- (e) “**Junior Debt Makewhole**” has the meaning set out in the Project Agreement.
- (f) “**Junior Lenders**” has the meaning set out in the Project Agreement.
- (g) “**Lenders**” has the meaning set out in the Project Agreement.



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- (h) “**Lending Agreements**” has the meaning set out in the Project Agreement.
- (i) “**Non-Default Termination Sum**” has the meaning given in Section 4.1(b) of this Schedule 23.
- (j) “**Project Co Amount**” means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, including for greater certainty any loans made or capital contributed to Project Co by any Affiliate of Project Co or a Project Co Party, prorated by a fraction, the numerator of which is the period between the date of commencement of the Works and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the Scheduled Substantial Completion Date.
- (k) “**Project Co Default Termination Sum**” has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (l) “**Senior Debt Amount**” has the meaning set out in the Project Agreement.
- (m) “**Senior Debt Makewhole**” has the meaning set out in the Project Agreement.
- (n) “**Senior Lenders**” has the meaning set out in the Project Agreement.
- (o) “**Subcontractor Losses**” means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Design and Construction Contract as a direct result of the termination of this Project Agreement (including any commercially reasonable breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount; provided that, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
- (i) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any commercially reasonable breakage fee set out in any of the Ancillary Documents);
  - (ii) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
  - (iii) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.

## 2. COMPENSATION ON TERMINATION FOR CONTRACTING AUTHORITY DEFAULT OR CONVENIENCE

### 2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 36 of this Project Agreement or Contracting Authority terminates this Project Agreement pursuant to Section 37.3 of this Project Agreement, Contracting Authority shall pay to Project Co the Contracting Authority Default Termination Sum.
- (b) The “**Contracting Authority Default Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
  - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 33.2(b) and 34.2(b) of this Project Agreement;
  - (iv) the Employee Termination Payments and the Subcontractor Losses;
  - (v) any reasonable costs properly incurred by Project Co to wind up its operations;  
and
  - (vi) the Project Co Amount;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;

- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) of this Project Agreement,

provided that the Contracting Authority Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Contracting Authority Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Contracting Authority Default Termination Sum in accordance with Section 5 of this Schedule 23.

### 3. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

#### 3.1 Compensation

- (a) If Contracting Authority terminates this Project Agreement pursuant to Section 35 of this Project Agreement, Contracting Authority shall pay to Project Co the Project Co Default Termination Sum.
- (b) The “**Project Co Default Termination Sum**” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of this Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
  - (i) any amount of the Substantial Completion Payment and any other amounts paid by Contracting Authority on or before the Termination Date;

- (ii) Contracting Authority's estimate of the cost to complete the Works, including the cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and Contracting Authority's other consultants and including all reasonable and proper costs incurred by Contracting Authority in re-tendering the Works or any portion thereof;
  - (iii) Contracting Authority's estimate of the aggregate of all Direct Losses suffered, sustained or incurred by Contracting Authority as a result of, in respect of, or arising out of the event or events which resulted in the termination of this Project Agreement and arising out of the termination together with all costs of entering into a new design and construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as this Project Agreement;
  - (iv) the Completion Holdback, in each case as at the time the Project Co Default Termination Sum is required to be made;
  - (v) the Legislative Holdback required to be maintained by Contracting Authority as at the time the Project Co Default Termination Sum is required to be made, which amount will be paid by Contracting Authority in accordance with the Construction Act (Ontario); and
  - (vi) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) of this Project Agreement.
- (c) To the extent that any amounts that Contracting Authority has estimated or determined pursuant to Sections 3.1(b)(ii), 3.1(b)(iii) or 3.1(b)(iv) of this Schedule 23, are in excess of what is required by Contracting Authority to complete the Work or compensate for Direct Losses, the Completion Holdback or the Legislative Holdback, as applicable, Contracting Authority shall promptly return such excess amounts to Project Co.
- (d) Contracting Authority shall pay the Project Co Default Termination Sum in accordance with Section 5 of this Schedule 23.

#### **4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION FOR RELIEF EVENT**

##### **4.1 Consequences**

- (a) If either Party terminates this Project Agreement pursuant to Section 37.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 37.2 of the Project Agreement or if Contracting Authority terminates the Project Agreement pursuant to Section 37.5 of the Project Agreement, Contracting Authority shall pay to Project Co the Non-Default Termination Sum.

- (b) The “Non-Default Termination Sum” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount;
  - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 4.3(b), 33.2(b) and 34.2(b) of this Project Agreement; and
  - (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims; and
- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co’s obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm’s length terms, save to

the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and

- (vii) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vi) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Non-Default Termination Sum in accordance with Section 5 of this Schedule 23.

## 5. GENERAL

### 5.1 Payment and Interest Following Termination

- (a) In respect of the termination payments to be made pursuant to either Section 2 or 4 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to Contracting Authority an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, Contracting Authority shall calculate and notify Project Co of the Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (c) Contracting Authority shall:
  - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable, and so long as all of demobilization of the Works has been completed; and
  - (ii) indemnify Project Co as provided in Section 45.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
    - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including)

the date which is 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable; and

- (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (d) In respect of the termination payments to be made pursuant to Section 3 of this Schedule 23, if the applicable termination sum is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify Contracting Authority as provided in Section 45.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

## 5.2 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

## 5.3 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 5 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

## 5.4 Outstanding Debt Amounts

- (a) Contracting Authority shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge Contracting Authority's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**SCHEDULE 24**

**[REDACTED]**



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**SCHEDULE 25****INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS****1. WORKS PHASE INSURANCE COVERAGE**

1.1 Subject to Section 6, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the IO Construction Insurance Program (“**IOCIP**”) the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
- (c) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability); and
- (d) Project Specific Professional Liability.

1.2 Subject to Section 6, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) Automobile Liability;
- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
- (c) Aircraft and Watercraft Liability (if any exposure);
- (d) “All Risks” Marine Cargo (if any exposure);
- (e) “All Risks” Contractors’ Equipment;
- (f) Comprehensive Crime; and
- (g) WSIB.

**2. NO LIMIT ON RECOVERY**

2.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Contracting Authority or by

Project Co, shall in no way limit Project Co's liability or obligations to Contracting Authority or Contracting Authority's liability or obligations to Project Co, as applicable.

### **3. ADDITIONAL COVER**

3.1 Without prejudice to the other provisions of this Schedule 25, Contracting Authority and Project Co shall, at all relevant times and at their own expense, obtain and maintain (or cause to be obtained and maintained) those insurances which they are required to obtain and maintain (or cause to be obtained and maintained) by Applicable Law, or that they consider necessary.

3.2 Contracting Authority reserves the right to require Project Co to purchase such additional insurance coverage as Contracting Authority may reasonably require. Contracting Authority also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as Contracting Authority may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by Contracting Authority and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Contracting Authority.

### **4. RESPONSIBILITY FOR DEDUCTIBLES**

4.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

### **5. COOPERATION WITH INSURER'S CONSULTANT**

5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then Contracting Authority and Project Co shall, and shall require the Contracting Authority Parties and the Project Co Parties, respectively, to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and Contracting Authority (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**6. UNINSURABLE RISKS**

- 6.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
    - (i) where Applicable Laws require that the insurer be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
    - (ii) where Applicable Laws do not require that the insurer be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
  - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

Project Co has the onus of demonstrating, to Contracting Authority’s reasonable satisfaction that the foregoing definition applies to a particular risk.

- 6.2 Project Co shall notify Contracting Authority as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Contracting Authority with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 6.3 Project Co and Contracting Authority shall, as soon as possible following the provision of the notice referred to in Section 6.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Contracting Authority are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 6.4 In the event that Project Co and Contracting Authority, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 6.2, Contracting Authority may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable

Risk, in which case this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 37.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 37.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.5 On the occurrence of an Uninsurable Risk, Contracting Authority may, in its absolute discretion, either:

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
- (b) terminate this Project Agreement in accordance with Section 37.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 37.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 6.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

6.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain (or cause to be obtained and maintained) insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 6 shall no longer apply to such risk.

## 7. TOTAL OR SUBSTANTIAL DESTRUCTION

7.1 In the event of damage to, or destruction of, all or substantially all of the Expansion Infrastructure for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Expansion Infrastructure or any other

assets, materials or goods necessary or desirable for the carrying out of the Works, all in accordance with the terms of the Insurance Trust Agreement.

## **8. SUBCONTRACTORS**

8.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which Contracting Authority may suffer as a direct result of Project Co's failure to comply with the foregoing.

8.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or cause to be obtained) by Project Co, Project Co shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Lands and ensure that such Subcontractor does not perform any further part of the Works until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

## **9. RENEWAL**

9.1 Project Co shall provide to Contracting Authority, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or cause to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to Contracting Authority, acting reasonably.

## **10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

10.1 All insurance provided by Project Co, shall:

- (a) include Project Co and Contracting Authority, IO, MTO as Named Insureds to the extent specified in Appendix A of this Schedule 25;
- (b) include Contracting Authority, IO, MTO, Municipality, the Lenders and the Lenders' Agent and His Majesty the King in right of Ontario, His Ministers, agents, appointees and employees, as the case may be, as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;

- (c) except with respect to the Project Specific Professional Liability, Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against the Lenders and the Lenders' Agent, Contracting Authority, the Contracting Authority Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
  - (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
  - (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority or the Lenders without any right of contribution of any insurance carried by Contracting Authority or the Lenders.
- 10.2 Notwithstanding that “Contracting Authority” includes each ministry, agency, board or other subdivision, department or branch of Contracting Authority, for purposes of this Schedule 25, including Appendix A hereto, certain ministries and agencies of Contracting Authority are listed as Named Insureds and/or Additional Insureds for greater certainty and for insurance evidence requirements.

## **11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 11.1 Prior to the execution of the Project Agreement, Project Co will provide Contracting Authority with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 11.2 Prior to the execution of the Project Agreement, Project Co will provide Contracting Authority with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to Contracting Authority no later than 90 days after execution of this Project Agreement.

## **12. FAILURE TO MEET INSURANCE REQUIREMENTS**

- 12.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to Contracting Authority a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then Contracting Authority shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at Contracting Authority's option, be payable by Project Co to Contracting Authority on demand or be deducted by Contracting Authority from the next payment or payments otherwise due to Project Co.
- 12.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by Contracting

Authority, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

### 13. MODIFICATION OR CANCELLATION OF POLICIES

- 13.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to Contracting Authority and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 13.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to Contracting Authority, and the Lenders' Agent.
- 13.3 With respect to insurances described in Section 1.1(a), (b) and (c), and Section 1.2(d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Contracting Authority, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

### 14. INSURERS

- 14.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to Contracting Authority and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 14.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or



- (b) a Long-Term Financial Strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or
- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to Contracting Authority and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

## 15. POLICY TERMS AND CONDITIONS

- 15.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to Contracting Authority, its insurance advisors and Lenders, acting reasonably.
- 15.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

## 16. FAILURE TO COMPLY

- 16.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

## 17. PERFORMANCE SECURITY REQUIREMENTS

- 17.1 Project Co shall obtain and deliver to Contracting Authority, original executed and sealed Bonds on Financial Close. Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, Project Co is required to submit with such Bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to Contracting Authority to evidence the authority of the agent or the attorney in fact.
- 17.2 Such Bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfilment of the Project Agreement.
- 17.3 For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing or Cost of the Financing, and it is agreed that the Parties intend to benefit the Surety by this Section 17.3 and that the Surety may rely upon and enforce the provisions of this Section 17.3.



- 17.4 On Financial Close, Project Co shall either deliver to Contracting Authority:
- (a) a Performance Bond, in the form attached as Appendix B to this Schedule 25, which shall be in an amount that is no less than \$[REDACTED]; or
  - (b) a Performance Bond with a loss advance payment, liquidated damages advance payment or similar feature which shall:
    - (i) be in the form:
      - (A) acceptable to Contracting Authority, acting reasonably, and
      - (B) in compliance with the Construction Act;
    - (ii) be in an amount that is no less than \$[REDACTED] which such amount being net of any deduction of the loss advance payment, liquidated damages advance payment or similar feature; and
    - (iii) not bind Contracting Authority to any alternative dispute resolution, arbitration or other similar requirement.
- 17.5 In addition to the Performance Bond described in Section 17.4, on Financial Close, Project Co shall also deliver to Contracting Authority a Labour and Material Payment Bond, in the form attached as Appendix C to this Schedule 25, which shall be in an amount that is no less than \$[REDACTED].

## **18. INSURANCE TRUST AGREEMENT**

- 18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion of the Works which relate to equipment purchased or owned by Contracting Authority shall be payable solely to Contracting Authority and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

**APPENDIX A TO SCHEDULE 25  
INSURANCE REQUIREMENTS**

[REDACTED]

**APPENDIX B TO SCHEDULE 25  
PERFORMANCE BOND**

**[REDACTED]**

RIDER NO. 1 TO APPENDIX B  
Amending Rider

FORM OF AMENDING RIDER TO PERFORMANCE BOND

No. \_\_\_\_\_

**TO BE ATTACHED TO AND AMEND THE PERFORMANCE BOND NO. [Insert Bond No.]** dated [Insert Date] (the “**Bond**”) concurrently with the execution of this Amending Rider, issued by [Insert Surety], as surety (hereinafter called the “**Surety**”), on behalf of [Insert Contractor], as principal (hereinafter called the “**Contractor**”), and in favour of [Insert Project Co], as obligee (hereinafter called the “**Owner**”).

**NOW THEREFORE**, in consideration of [REDACTED] (\$[REDACTED]) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Surety shall not be discharged or released from liability under the Bond and such liability shall not be in any way affected by:
  - 1.1 any changes, alterations, additions or variations, taking or receiving of security between the Contractor and the Owner, or extension of time, or other modification of the Contract; or
  - 1.2 the exercise by the Owner of any of the rights or powers reserved to it under the Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Work under the Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Contractor and the Owner.
2. The Surety agrees that for the purposes of determining its liability under the Bond, findings or decisions against the Contractor under the terms of the Contract, that are binding on the Contractor and the Owner shall also bind the Surety.
3. If any part or provision of this Rider or Bond is found to be prohibited, void or unenforceable, that part or provision shall be ineffective to the extent of such unenforceability and severed from the Bond and the remainder of the Bond’s provisions shall remain valid and in full force and effect.

**IN WITNESS WHEREOF**, the Contractor and Surety have signed and sealed this Amending Rider dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNED, SEALED and DELIVERED**  
in the presence of:

***[Insert Contractor]***

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

***[Insert Surety]***

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

RIDER NO. 2 TO APPENDIX B  
Multiple Obligee Rider

FORM OF MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND

No. \_\_\_\_\_

**TO BE ATTACHED TO AND AMEND THE PERFORMANCE BOND NO. [Insert Bond No.]** dated [Insert Date], as amended (the “**Bond**”) concurrently with the execution of this Multiple Obligee Rider, issued by [Insert Surety], as surety (hereinafter called the “**Surety**”), on behalf of [REDACTED], as principal (hereinafter called the “**Contractor**”), and in favour of [REDACTED], as obligee (hereinafter called “**Project Co**” or the “**Owner**”).

**NOW THEREFORE**, in consideration of [REDACTED] (\$[REDACTED]) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Bond shall be and is hereby amended to add His Majesty the King in right of Ontario as represented by the Minister of Transportation and His Majesty the King in right of Ontario as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation (hereinafter referred to as “**Contracting Authority**”) and [REDACTED], as administrative agent for and on behalf of certain lenders (the “**Lenders’ Agent**”), in their respective capacities as assignees of the Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee**” or “**Owner**”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Contractor and the Surety under the Bond and this Multiple Obligee Rider.
2. If there is an event of default by Contractor under the Contract (a “**Construction Event of Default**”) and the Lenders’ Agent or Contracting Authority makes a claim under the Bond, the Lenders’ Agent or Contracting Authority, as the case may be, shall make available to the Surety in accordance with the terms of the Contract the Balance of Contract Price.
3. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No material change in the Contract or any conduct of the Contractor, Project Co or the Lenders’ Agent, prior to the Contractor being declared in default, shall prejudice the rights or interest of Contracting Authority under the Bond or this Multiple Obligee Rider provided that Contracting Authority has not agreed to such alteration or material change without the prior written consent of the Surety.
5. Project Co, Contractor, Surety and the Lenders’ Agent acknowledge and agree that they will not remedy any default, settle, waive, reduce or otherwise compromise any claims under the Bond without the prior written approval of Contracting Authority, acting reasonably, and the Surety shall provide reasonable notice to Contracting Authority prior to remedying any default, settling, waiving, reducing or otherwise compromising any claim or making any payment under the Bond, to the extent permitted by the Ontario *Construction Act* and Regulations, as amended, provided that the Surety shall not be precluded from tendering upon the Obligee performance pursuant to one of the four numbered options in the Bond.
6. The Surety acknowledges the process in the Lenders’ Direct Agreement for the Lenders’ Agent making a claim against the Bond, including, but not limited to, the Lenders’ Agent’s step in rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from Project Co or the Surety’s rights under the Bond or this Multiple Obligee Rider.

7. The Surety acknowledges the process in the Lenders' Direct Agreement and Construction Contractor's Direct Agreement for Contracting Authority making a claim against the Bond, including, but not limited to, the Contracting Authority's step in rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from Project Co or the Surety's rights under the Bond or this Multiple Obligee Rider.
8. Contracting Authority is not liable to the Lenders' Agent, Contractor, Owner or Surety for any approval reasonably provided or not provided pursuant to section 4 of this Multiple Obligee Rider. Contracting Authority has no duty or obligation to make a demand on the Bond under any circumstance, in order to mitigate the losses of the Lenders' Agent or itself, or otherwise.
9. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
10. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Contractor, Surety, Project Co, Contracting Authority and the Lenders' Agent have signed and sealed this Multiple Obligee Rider dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNED, SEALED and DELIVERED  
in the presence of:

**[REDACTED]**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

***[Insert Surety]***

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**[REDACTED]**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**[REDACTED]**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF  
TRANSPORTATION**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing



**HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF  
TRANSPORTATION AS REPRESENTED BY ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**APPENDIX C TO SCHEDULE 25  
FORM OF LABOUR AND MATERIAL PAYMENT BOND**

**[REDACTED]**

RIDER NO. 1 TO APPENDIX C  
Amending Rider

FORM OF AMENDING RIDER TO LABOUR AND MATERIAL PAYMENT BOND

No. \_\_\_\_\_

**TO BE ATTACHED TO AND AMEND THE LABOUR AND MATERIAL PAYMENT BOND NO. [Insert Bond No.]** dated [Insert Date] (the “**Bond**”) concurrently with the execution of this Amending Rider, issued by [Insert Surety], as surety (hereinafter called the “**Surety**”), on behalf of [Insert Contractor], as principal (hereinafter called the “**Contractor**”), and in favour of [Insert Project Co], as obligee (hereinafter called the “**Owner**”).

**NOW THEREFORE**, in consideration of [REDACTED] (\$[REDACTED]) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Surety shall not be discharged or released from liability under the Bond and such liability shall not be in any way affected by:
  - 1.1 any changes, alterations, additions or variations, taking or receiving of security between the Contractor and the Owner, or extension of time, or other modification of the Contract; or
  - 1.2 the exercise by the Owner of any of the rights or powers reserved to it under the Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Work under the Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Contractor and the Owner.
2. Any material change in the Contract between the Contractor and the Owner shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
3. The Surety agrees that for the purposes of determining its liability under the Bond, findings or decisions against the Contractor under the terms of the Contract, that are binding on the Contractor and the Owner shall also bind the Surety.
4. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled “Rental Rates on Construction Equipment” published prior to the period during which the equipment was used in the performance of the Design and Construction Contract.
5. If any part or provision of this Rider or Bond is found to be prohibited, void or unenforceable, that part or provision shall be ineffective to the extent of such unenforceability and severed from the Bond and the remainder of the Bond’s provisions shall remain valid and in full force and effect.

**IN WITNESS WHEREOF**, the Contractor and Surety have signed and sealed this Amending Rider dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNED, SEALED and DELIVERED**  
in the presence of:

***[Insert Contractor]***

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

***[Insert Surety]***

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

RIDER NO. 2 TO APPENDIX C  
Multiple Obligee Rider

FORM OF MULTIPLE OBLIGEE RIDER TO LABOUR AND MATERIAL PAYMENT BOND

No. \_\_\_\_\_

**TO BE ATTACHED TO AND AMEND THE LABOUR AND MATERIAL PAYMENT BOND NO. [Insert Bond No.]** dated [Insert Date], as amended (the “**Bond**”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligee Rider (“**L&M Multiple Obligee Rider**”), issued by [Insert Surety], as surety (hereinafter called the “**Surety**”), on behalf of [REDACTED], as principal (hereinafter called the “**Contractor**”), and in favour of [REDACTED], as obligee (hereinafter called “**Project Co**” or the “**Obligee**”).

**NOW THEREFORE**, in consideration of [REDACTED] (\$[REDACTED]) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Bond shall be and is hereby amended to add His Majesty the King in right of Ontario as represented by the Minister of Transportation and His Majesty the King in right of Ontario as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation (hereinafter referred to as “**Contracting Authority**”) and [REDACTED], as administrative agent for certain lenders (the “**Lenders’ Agent**”), in their respective capacities as assignees of the Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee**” or “**Owner**”) shall, subject to the terms of the Bond and this L&M Multiple Obligee Rider, be entitled to enforce the obligations of the Contractor and the Surety under the Bond and this L&M Multiple Obligee Rider.
2. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
3. No material change in the Contract or any conduct of the Contractor, Project Co or the Lenders’ Agent, prior to the Contractor being declared in default, shall prejudice the rights or interest of Contracting Authority or Claimant under the Bond or this L&M Multiple Obligee Rider provided that Contracting Authority or Claimant has not agreed to such alteration or material change without the prior written consent of the Surety.
4. In the event of any ambiguity, conflict or inconsistency, the Bond and this L&M Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
5. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.

**IN WITNESS WHEREOF**, the Contractor, Surety, Project Co, Contracting Authority and the Lenders' Agent have signed and sealed this L&M Multiple Obligee Rider dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNED, SEALED and DELIVERED**  
in the presence of:

**[REDACTED]**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

***[Insert Surety]***

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**[REDACTED]**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**[REDACTED]**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF  
TRANSPORTATION**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF  
TRANSPORTATION AS REPRESENTED BY ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

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**SCHEDULE 26****RECORD PROVISIONS****1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain at its own expense, all the records (including superseded records) referred to in Section 2.1, as follows:
- (a) in accordance with this Section 1;
  - (b) in accordance with the Project Agreement;
  - (c) in accordance with the requirements of Good Industry Practice;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in electronic format on Contracting Authority's Award system or Contracting Authority's designated record keeping system uploaded monthly at a minimum;
  - (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 27 of the Project Agreement; and
  - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Expansion Infrastructure or otherwise on the Site, in addition to retaining and maintaining records referred to in Section 2.1 of this Schedule 26 in electronic format on Contracting Authority's Award system or Contracting Authority's designated record keeping system.
- 1.3 If Project Co establishes its own record keeping system(s) for the records referred to in Section 2.1 of this Schedule 26 then access to that system(s) shall be provided to Contract Authority Representatives. This provision will not limit or reduce Project Co's responsibility under any other provision of record keeping for retaining and maintaining on Contracting Authority's designated record keeping system. Any costs for access to Project Co's system(s) will be at Project Co's own expense.



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- 1.4 Project Co shall keep a live and current activity register of all submissions made under Schedule 10 - Review Procedure and will include such information as; review status, responsible party, time allowed for review, time remaining for review, timing of re-submissions, approved time extensions and any other information as would be reasonably required or requested to track the review process until a No Comment status is reached. Any and all re-submissions or any other changes will be tracked as part of this provision. The activity register will be made available to Contracting Authority Representatives at no cost. The register shall be in place prior to any submissions under Schedule 10.
- 1.5 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.6 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be on the most updated version of the applicable software and editable in updated base software format, of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to Contracting Authority, and shall conform to the Output Specifications and Good Industry Practice and the CAD Standards. Where by prior agreement Contracting Authority and Project Co have agreed to accept DVD or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.
- 1.7 Records may, with the consent of Contracting Authority, not to be unreasonably withheld or delayed, be stored in electronic form if Contracting Authority has 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.
- 1.8 Subject to Sections 1.9 and 1.10, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.9 Project Co shall notify 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 1.8 of this Schedule 26 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, Contracting Authority may elect to require Project Co to deliver such records to Contracting Authority, in which case Project Co shall, at the expense of Contracting Authority, deliver such records (with the exception of Sensitive Information) to Contracting Authority in the manner and to the location as Contracting Authority shall specify; or
  - (b) if Contracting Authority fails to notify Project Co of its election pursuant to Section 1.9(a) within such 60 day period, Project Co may, at its expense, destroy such records.

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- 1.10 In the event of termination of this Project Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Contracting Authority in the manner and to the location that Contracting Authority shall reasonably specify. Contracting Authority shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.10 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
  - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.11 Where the termination of this Project Agreement arises:
- (a) as a result of a Contracting Authority Event of Default or pursuant to Section 37.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Contracting Authority; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.12 Within 30 days after the end of each year or partial year of the Project Term, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.13 Project Co shall provide to Contracting Authority:
- (a) not later than 60 days after the end of the first three fiscal quarters of Project Co in each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co's unaudited financial statements in respect of that period, including an unaudited balance sheet and an unaudited statement of income, all prepared in accordance with GAAP (as defined in the Lending Agreements), and
  - (b) not later than 120 days after the end of each fiscal year, a copy of Project Co's annual audited financial statements, in respect of that period, prepared in accordance with Applicable Law and GAAP (as defined in the Lending

Agreements), together with a certificate of the auditors of Project Co setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary or advisable and confirming that in their opinion such statements present fairly the financial position of Project Co and the results of its operations for the fiscal year reported on and have been defined in accordance with GAAP (as defined in the Lending Agreements),

all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 41 of the Project Agreement, shall be treated by Contracting Authority as Confidential Information of Project Co.

## **2. Records To Be Kept**

2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:

- (a) this Project Agreement, its Schedules and the Ancillary Documents, including all amendments to such agreements;
- (b) all records relating to the appointment and replacement of the Contracting Authority Representative and the Project Co Representative;
- (c) any Design Data, documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
- (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
- (e) all records relating to any statutory inspections of the Expansion Infrastructure or the Site, including any roadways;
- (f) any notices, reports, results and certificates relating to any Substantial Completion, Final Completion and completion of the Project Co Commissioning;
- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events and Relief Events;
- (i) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (j) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (k) any documents related to a Project Co Change in Ownership or Change in Control;

- (l) any documents relating to any Refinancing;
  - (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 1.13;
  - (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) all Quality Records or quality documents produced through Project Co's Quality Management System and referenced in Schedule 11;
  - (q) any documents relating to insurance and insurance claims;
  - (r) all Jointly Developed Materials; and
  - (s) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

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## SCHEDULE 27

### DISPUTE RESOLUTION PROCEDURE

#### 1. General

##### 1.1 Definitions

- (a) In this Schedule 27, unless the context otherwise requires:
- (i) “**Adjudication**” has the meaning given in Section 3.1(a).
  - (ii) “**Adjudication Dispute**” has the meaning given in Section 3.1(a)(ii).
  - (iii) “**Adjudicator**” has the meaning given in Section 3.1(a).
  - (iv) “**Arbitration Act, 1991**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
  - (v) “**Arbitration Referral Period**” has the meaning given in Section 4.13(a).
  - (vi) “**CDB**” has the meaning given in Section 4.1(a).
  - (vii) “**CDB Chair**” has the meaning given in Section 4.1(c).
  - (viii) “**CDB Expiry Date**” means the Final Completion Date, as may be extended pursuant to Section 4.1(b).
  - (ix) “**CDB Member Agreement**” has the meaning given in Section 4.1(a).
  - (x) “**CDB Member Statement**” has the meaning given in Section 4.3(a).
  - (xi) “**Claimant**” has the meaning given in Section 4.6(a).
  - (xii) “**Date of Commencement**” has the meaning given in Section 4.6(b).
  - (xiii) “**Dispute**” means all disagreements, disputes, or controversies arising during or following the Project Term between the Parties in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the Project Agreement or any provision of the Project Agreement, the rights or obligations of the Parties under the Project Agreement, or the exercise or failure to exercise a discretion or power given to a Party under the Project Agreement.
  - (xiv) “**Dispute Notice Supporting Documents**” has the meaning given in Section 1.6(b)(v).

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- (xv) “**Event of Default Dispute**” has the meaning given in Section 1.2(b).
- (xvi) “**Member**” has the meaning given in Section 4.1(a).
- (xvii) “**Notice of Adjudication**” has the meaning given in Section 3.1(c).
- (xviii) “**Notice of Dispute**” has the meaning given in Section 1.6(a).
- (xix) “**Notice of Request to Arbitrate**” has the meaning given in Section 5(c).
- (xx) “**Party Executive**” has the meaning given in Section 2(a).
- (xxi) “**Party Executive DRP Termination Notice**” has the meaning given in Section 2(e).
- (xxii) “**Party Representative**” means the Contracting Authority Representative or the Project Co Representative, as the context requires.
- (xxiii) “**Project Agreement Arbitration**” has the meaning given in Section 7(a).
- (xxiv) “**Public Safety Dispute**” means any Dispute which Contracting Authority or Project Co, acting reasonably, determines involves an alleged breach of the Project Agreement by the other Party or any act or omission on the part of the other Party or any person with whom the other Party is legally affiliated or for whom the other Party is legally responsible (including a Project Co Party or a Contracting Authority Party, as applicable), which creates or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Project or the Lands, or to the environment.
- (xxv) “**Reply Period**” has the meaning given in Section 4.7(a).
- (xxvi) “**Respondent**” has the meaning given in Section 4.6(a).
- (xxvii) “**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.
- (xxviii) “**Schedule 27 Procedural Dispute**” means a procedural Dispute regarding the interpretation of, or compliance with, this Schedule 27 (including any Dispute in respect of whether or not a Notice of Dispute complies with the requirements of Section 1.6(b)), other than with respect to any Dispute that has been or must be referred for resolution to Adjudication, arbitration or litigation in accordance with this Schedule 27, which shall be resolved as part of the underlying Adjudication, arbitration or litigation proceedings.

- (xxix) “**Statement of Case**” has the meaning given in Section 4.6(a).
- (xxx) “**Statement of Reply**” has the meaning given in Section 4.7.
- (xxxii) “**Technical Member**” has the meaning given in Section 4.1(c).
- (xxxiii) “**Third Party Arbitration**” has the meaning given in Section 7(a).
- (xxxiiii) “**Third Party Litigation**” has the meaning given in Section 7(b).

## 1.2 Applicability of this Schedule 27

- (a) Except as otherwise provided in the Project Agreement, all Disputes shall be resolved in accordance with this Schedule 27.
- (b) Notwithstanding anything set forth in this Schedule 27, and without limiting or prejudice to a Party’s rights pursuant to Section 6 or Contracting Authority’s right to terminate the Project Agreement pursuant to Section 35.3(b) of the Project Agreement, either Party may, by the delivery of written notice to the other Party, require that any Dispute in respect of whether a Project Co Event of Default or a Contracting Authority Event of Default has occurred under the Project Agreement or any Dispute in respect of or related to Contracting Authority’s right to terminate the Project Agreement pursuant to Section 35.3(a) or Section 35.4 of the Project Agreement, or Project Co’s right to terminate the Project Agreement pursuant to Section 36.2 of the Project Agreement (an “**Event of Default Dispute**”) be resolved in accordance with Section 5. Sections 1.7, 2, 3 and 4 shall not apply to any such Event of Default Dispute.

## 1.3 Independent Certifier Determinations and Decisions

- (a) Save and except as set out in Section 24.4(i) of the Project Agreement and Section 3,(i) no determination or decision of the Independent Certifier made pursuant to the Project Agreement shall be binding upon the Parties, and (ii) any Party may refer a Dispute in respect of any such determination or decision of the Independent Certifier for resolution pursuant to this Schedule 27.
- (b) If a Party refers a Dispute in respect of a determination or decision of the Independent Certifier made pursuant to the Project Agreement for resolution by
  - (i) Adjudication pursuant to Section 3, the Independent Certifier shall not be permitted to be the Adjudicator in such Adjudication; or
  - (ii) the CDB pursuant to Section 4, the Independent Certifier shall not be permitted to provide its opinion as an expert to the CDB pursuant to Section 4.9(c).

#### 1.4 Continued Performance During Disputes

- (a) Project Co and Contracting Authority shall diligently carry out their respective obligations under the Project Agreement during the pendency of any Dispute. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of a matter that is in Dispute, then subject to Section 1.4(b), either Party may proceed without prejudice to either Party's rights under the Project Agreement in respect of the Dispute (including in respect of any entitlement of Project Co to a Delay Event, Compensation Event and/or Variation).
- (b) While a Dispute is pending (including any Schedule 27 Procedural Dispute), Contracting Authority may give such written instructions as in Contracting Authority's opinion are necessary in respect of the matter that is in Dispute, including for Project Co to proceed with the Works which are the subject of the Dispute in accordance with the position of Contracting Authority, and Project Co shall comply with such written instructions forthwith.
- (c) Project Co acknowledges and agrees that (i) a pending Dispute will not justify Project Co's failure or refusal to comply with any written instructions given by Contracting Authority pursuant to Section 1.4(b), including in the event that complying with such written instructions would prevent Project Co from achieving Substantial Completion by the Scheduled Substantial Completion Date; and (ii) Project Co has no right to require a determination pursuant to this Schedule 27 of whether or not Contracting Authority is entitled to give such written instructions or whether or not Project Co is required to comply with such written instructions, before complying with such written instructions. Only concurrently with or after complying with Contracting Authority's written instructions shall Project Co be entitled to refer any such Dispute for resolution in accordance with this Schedule 27. For clarity, no Schedule 27 Procedural Dispute may be initiated in respect of any of the written instructions given by Contracting Authority issued pursuant to Section 1.4(b).
- (d) Any claims for time and/or cost consequences of complying with this Section 1.4 shall be addressed as part of the resolution of the applicable Dispute, provided that, in the event the matter in Dispute is determined in favour of Project Co, proceeding in accordance with Contracting Authority's written instructions pursuant to Section 1.4(b) shall (i) subject to and in accordance with Section 31 of the Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 32 of the Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

#### 1.5 Mutual Resolution Efforts

- (a) The Parties agree that at all times each of them will make reasonable and *bona fide* efforts to resolve any Dispute arising between them:



- (i) in the ordinary course in accordance with the Project Agreement starting with the Project teams of the Parties; and
  - (ii) if and to the extent the Project teams cannot resolve the Dispute in the ordinary course in accordance with the Project Agreement, by amicable negotiations on a without prejudice basis between the Party Representatives.
- (b) Each Party shall provide full, frank, candid and timely disclosure of relevant facts, information and documents (subject to legal privilege) as may be required by the Project Agreement or reasonably requested by the other Party to facilitate the resolution of any Dispute.
- (c) The communication of facts, documents, or information by a Party on a without prejudice basis does not relieve that Party of any obligation to deliver any facts, documents or information required under the Project Agreement.

## 1.6 Notice of Dispute

- (a) If the Parties are unable to resolve a Dispute pursuant to Section 1.5(a), either Party may deliver to the Party Representative of the other Party a written notice of dispute (the “**Notice of Dispute**”) in accordance with Section 1.6(b).
- (b) The Notice of Dispute must:
- (i) expressly state that it is a “Notice of Dispute” pursuant to this Section 1.6;
  - (ii) to the extent available at the time the Notice of Dispute is delivered and following reasonable due diligence, provide particulars of the matters in Dispute sufficient to allow the Party who will receive the Notice of Dispute to understand and meaningfully respond to the Notice of Dispute;
  - (iii) describe any relief sought, including:
    - 1. the amount claimed, if any, or, if the amount claimed is not available, the approximate value of the claim; and
    - 2. any extension of time sought, or if that is not available, any anticipated extension of time sought;
  - (iv) identify whether the Dispute is a Public Safety Dispute;
  - (v) to the extent available at the time the Notice of Dispute is delivered, attach all key documents relevant to the Dispute on which the Party intends to rely for the purposes of resolving the Dispute pursuant to this Schedule 27 in the possession or control of such Party following

reasonable due diligence (collectively, the “**Dispute Notice Supporting Documents**”); and

- (vi) be signed by the Party Representative for the Party delivering the Notice of Dispute.
- (c) A Notice of Dispute must be delivered as a precondition to the Parties proceeding with any further steps contemplated in Section 1.7 or Sections 2 to 5.
- (d) The requirements of this Section 1.6 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 9(a).

### 1.7 Schedule 27 Procedural Disputes

- (a) Prior to the CDB Expiry Date, either Party may refer a Schedule 27 Procedural Dispute to the CDB for resolution in accordance with this Section 1.7 following the delivery of a Notice of Dispute in respect of the subject matter of the Schedule 27 Procedural Dispute pursuant to Section 1.6(a).
- (b) Notwithstanding anything to the contrary in this Schedule 27, no Schedule 27 Procedural Dispute shall be required to be escalated for amicable resolution by the Party Executives pursuant to Section 2.
- (c) Except as otherwise expressly set out in this Section 1.7, Sections 4.5 to 4.13 shall not apply to any Schedule 27 Procedural Dispute.
- (d) Subject to Sections 1.7(e), 1.7(f) and 4.12, the CDB shall establish the process for the resolution of any Schedule 27 Procedural Dispute, and may make such orders or give such directions as the CDB considers appropriate.
- (e) Each Party shall provide the CDB with a brief submission in writing in support of its case with regards to each Schedule 27 Procedural Dispute. The responding Party shall provide the CDB with its brief submission within five Business Days of the delivery of the referring Party’s brief submission or such longer period agreed by the Parties in writing or ordered by the CDB.
- (f) The CDB shall render its decision as soon as possible and within five 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 Business Days after the conduct of the oral hearing. 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.
- (g) 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(e); and
  - (ii) final and binding.
- (h) The Parties agree that no decision of the CDB on a Schedule 27 Procedural Dispute shall be subject to appeal, arbitration, litigation or any other dispute resolution process, and expressly waive any and all such rights in respect of each Schedule 27 Procedural Dispute resolved by the CDB.

## 2. Amicable Resolution by Party Executives

- (a) Upon a Party's receipt of a Notice of Dispute, the Dispute shall be escalated for amicable resolution by an executive of each Party (each a "**Party Executive**").
- (b) The selected Party Executive for each Party shall be:
  - (i) in a position of authority above that of the Party Representative; and
  - (ii) shall have or be delegated full authority to resolve the Dispute subject only to approval of the Chief Executive Officer and board of directors or similar governing or regulatory body of the Party (as applicable).
- (c) The Party Executives shall promptly, and by no later than 15 Business Days (or such longer period agreed by the Parties in writing) from the date of the receiving Party's receipt of the applicable Notice of Dispute, meet and make reasonable and *bona fide* efforts to resolve the Dispute.
- (d) All discussions and negotiations held, and all communications exchanged, between the Parties in connection with the Party Executive negotiations shall be on a without prejudice basis to facilitate the resolution of the Dispute.
- (e) Either Party may terminate the process of amicable resolution by the Party Executives by providing Notice of termination of such process (each a "**Party Executive DRP Termination Notice**") at any time:
  - (i) if the initial Party Executive meeting does not occur by the expiry of the period set out in Section 2(c); or
  - (ii) 10 Business Days after the initial Party Executive meeting described in Section 2(c).
- (f) The requirements of this Section 2 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 9(a).

### 3. Adjudication

#### 3.1 Referral to Adjudication

- (a) Subject to Section 1.3(b), either Party may refer a Dispute to a qualified and independent representative of the Independent Certifier for determination by adjudication, or otherwise to a qualified and independent adjudicator listed by the “Authorized Nominating Authority” designated pursuant to the *Construction Act*, (in either case, the “**Adjudicator**”) in accordance with this Section 3 (“**Adjudication**”) and the *Construction Act*, provided that the Dispute:
- (i) relates to the Works and arises prior to Final Completion; and
  - (ii) is a matter pursuant to which there is a statutory right to submit such matter to adjudication in accordance with and to the extent set out in the *Construction Act* (each an “**Adjudication Dispute**”).
- (b) The Parties agree that:
- (i) neither Party shall refer a Dispute to Adjudication in respect of a claim for delay, disruption or acceleration, or any claim for:
    - 1. a Delay Event;
    - 2. determination of any entitlement under the Project Agreement to a Compensation Event, a Relief Event, or an event of Force Majeure; or
    - 3. determination as to whether
      - a) a Party is obligated pursuant to the Project Agreement to proceed with a Variation; or
      - b) any works subject to a Dispute are Works under the Project Agreement or whether Project Co is entitled to a Variation in respect of such works; and
  - (ii) they shall not refer to Adjudication, and do not agree to Adjudicate pursuant to section 13.5(1)7 of the *Construction Act*, 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*.
- (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 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 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*, 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*.

### 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*, and:
  - (i) shall act impartially;
  - (ii) may conduct the Adjudication in the manner the Adjudicator determines appropriate in the circumstances, subject to the obligation to conduct the Adjudication in an impartial manner and subject to any joint procedural directions delivered jointly by Project Co and Contracting Authority;
  - (iii) may issue directions respecting the disclosure of documents which a party intends to rely on or that a party has requested from another party in the Adjudication in a manner that ensures that each party to the Adjudication has an opportunity to review such documents, and with regard to principles of proportionality and the desire of the parties for a cost-effective process;
  - (iv) may refuse to hear the Adjudication if the preconditions to bringing an Adjudication Dispute to Adjudication have not yet been met; and
  - (v) shall make a determination of the matter that is the subject of an Adjudication on the basis of applicable laws and the Project Agreement.

### 3.3 Review of Adjudicator's Determination

- (a) Any Party that is dissatisfied with a determination of the Adjudicator may, within 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(a). 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(a) before the expiry of such period, or if any arbitration that is commenced pursuant to Section 5 is subsequently abandoned in writing by the Parties before an arbitral award is made pursuant to Section 5, then the determination of the Adjudicator shall be final and binding on the Parties.

- (b) The Parties agree that any determination of the Adjudicator that becomes final and binding on the Parties in accordance with Section 3.3(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Dispute resolved by the Adjudicator.

#### 4. Combined Dispute Board

##### 4.1 Appointment of the CDB

- (a) The Combined Dispute Board (“CDB”) shall be a standing body composed of three members appointed in accordance with this Schedule 27 (each a “Member”). On or before Financial Close, the CDB shall be constituted by a written agreement between the Parties and each of the Members substantially in the form set out in Appendix “B” to this Schedule 27 and executed and delivered in accordance with Schedule 2 – Completion Documents of the Project 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 the CDB which remain outstanding upon the end of the CDB term.
- (c) Unless otherwise agreed by the Parties in writing:
  - (i) two Members shall have technical and/or senior managerial expertise relevant to the Project (each a “Technical Member”); and
  - (ii) the third Member, who shall be the chair of the CDB, shall have significant experience in construction law and shall be either: (A) a lawyer who is licensed to practice law in Ontario or another province of Canada other than Quebec; or (B) an ex-judge or master of a superior court in Ontario or another province of Canada other than Quebec providing adjudication, arbitration and/or mediation services in Ontario or another province of Canada (the “CDB Chair”).
- (d) Each Member shall be independent, impartial and, unless otherwise agreed by the Parties in writing, experienced in resolving and deciding disputes of a type, complexity and value commensurate with the potential Disputes that could be referred to the CDB.
- (e) Each Party shall appoint a Technical Member of its choice on or prior to Financial Close, and shall deliver to the other Party a CDB Member Statement for that

Member upon appointment in accordance with Schedule 2 – Completion Documents of the Project Agreement.

- (f) The Parties shall jointly appoint the CDB Chair on or prior to Financial Close, and deliver a CDB Member Statement for the CDB Chair upon appointment in accordance with Schedule 2 – Completion Documents of the Project 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 30 days of the need for replacement arising, in the same manner as the Member being replaced was originally selected in accordance with this Schedule 27, unless otherwise agreed by the Parties in writing. All actions taken by the CDB prior to the replacement of a Member shall remain valid. When one Member is to be replaced, the other Members shall continue to be Members, but shall not hold hearings or issue CDB decisions without the agreement of the Parties in writing prior to the replacement of the Member.
- (b) If a Party fails to appoint a replacement Technical Member and the Parties cannot agree on an alternative Technical Member within the period of time set out in Section 4.2(a), either Party may refer the appointment of that Technical Member or the alternative Technical Member for a court determination pursuant to Section 6(b).
- (c) If the Parties are unable to appoint a replacement CDB Chair within the period of time set out in Section 4.2(a), either Party may refer the appointment of the replacement CDB Chair for a court determination pursuant to Section 6(b).

#### 4.3 Impartiality of the Members

- (a) Every prospective Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other Members, any facts or circumstances which might call into question the Member's independence in the eyes of the Parties or give rise to reasonable doubts as to the prospective Member's impartiality, substantially in the form set out in Appendix "A" to this Schedule 27 (the "**CDB Member Statement**").
- (b) A Member shall immediately disclose in writing to the Parties any facts or circumstances concerning the Member's impartiality or independence which may arise in the course of such Member's tenure.



- (c) Should any Party wish to challenge a prospective or current Member on the basis of an alleged lack of impartiality, independence or qualifications, it may, as soon as practicable after learning of the facts upon which the challenge is based, submit to the CDB and the other Party a request for a decision upon the challenge including a written statement of such facts.
- (d) If the challenged prospective or current Member does not withdraw, and the other Party does not agree to the challenge, either Party may refer the matter for a court determination pursuant to Section 6(b).
- (e) No Party shall challenge a current Member on the basis of an alleged lack of impartiality or independence as a result of the Member carrying out its duties under the CDB Member Agreement, including the provision of without prejudice dispute resolution assistance.
- (f) If a prospective or current Member is successfully challenged, the prospective Member shall not be appointed, or the current Member shall be removed forthwith from the CDB and the CDB Member Agreement, if any, between that Member and the Parties shall be automatically terminated.

#### 4.4 Ongoing Project Monitoring by the CDB

- (a) The Parties shall fully cooperate with the CDB and communicate information to it in a timely manner.
- (b) The Parties shall ensure that the CDB is kept informed of the performance of the Parties' obligations under the Project Agreement and of any Disputes arising in the course thereof by such means as reports or Notices issued by the Parties in respect of the Works. In particular, the CDB shall receive copies of any and all:
  - (i) amendments to the Project Agreement and Variation Confirmations;
  - (ii) Notices of Dispute;
  - (iii) Works Reports;
  - (iv) Monthly Reports and Quarterly Reports (as such terms are defined in the Independent Certifier Agreement);
  - (v) Proceeding at Risk Notices;
  - (vi) Notices delivered to Project Co by Contracting Authority pursuant to Section 13.3(a) of the Project Agreement;
  - (vii) Notices of, and responses to Notices of, Delay Events, Compensation Events, Relief Events and events of Force Majeure;



- (viii) the Substantial Completion Certificate, the Final Completion Certificate, and the other Notices and documents provided by each of the Parties and the Independent Certifier pursuant to Sections 24.8, 24.9, 24.10, 24.11, 24.12 and 24.13 of the Project Agreement; and
- (ix) such other Project documentation, Notices, and communications that either Party reasonably believes will assist to keep the CDB informed of the performance of the Project Agreement and of any Disputes arising in the course thereof,

at the same time they are delivered in accordance with the Project Agreement, from the Party that is delivering the document.

- (c) 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 Section 4.10(d), no Party shall have any conversation or any meeting with any Member in respect of the Project without the other Party being included in such conversation or being present at such meeting.

#### 4.5 CDB to Resolve Disputes

- (a) If the Parties are unable to resolve a Dispute other than a Schedule 27 Procedural Dispute prior to the CDB Expiry Date through amicable resolution by the Party Executives pursuant to Section 2 and a Party delivers a Party Executive DRP Termination Notice to the other Party, then subject to Section 3, either Party may in writing refer the Dispute to the CDB for resolution.

#### 4.6 Statement of Case

- (a) The Party referring a Dispute to the CDB pursuant to Section 4.5(a) (the “**Claimant**”) shall submit a concise written statement of its case (the “**Statement of Case**”) to the responding Party (the “**Respondent**”) and the CDB within 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 30 days of the Date of Commencement (the “**Reply Period**”), the Respondent shall deliver to the Claimant and the CDB a concise written statement of its reply to the Statement of Case (the “**Statement of Reply**”). The Statement of Reply shall only include:
  - (i) a statement of the Respondent’s position, including a statement of relevant facts and law;
  - (ii) the issues submitted to the CDB for a decision; and
  - (iii) any documents not contained in the Statement of Case on which the Respondent intends to rely.
- (b) The Reply Period may be extended to permit the Respondent additional time to provide its Statement of Case by:
  - (i) order of the CDB (including pursuant to Section 4.6(c) or Section 4.6(d)); or
  - (ii) agreement of the Parties, acting reasonably.

#### 4.8 Additional Documents Required by the CDB

- (a) The CDB may at any time request a Party to submit additional written statements or documentation within a reasonable amount of time to assist the CDB in preparing its decision. Each such request shall be communicated in writing by the CDB to the Parties, and any additional written statements or documentation submitted in response to the CDB’s request shall be submitted to the CDB and the other Party.

The CDB shall permit the other Party a reasonable amount of time to review and respond to such additional written statements or documentation.

#### **4.9 Evidence and Powers of the CDB**

- (a) Subject to Section 4.9(b), the CDB shall decide Disputes based on the Parties' Statement of Case and Statement of Reply and any additional documents and responses delivered pursuant to any of Sections 4.6(c), 4.6(d) or 4.8(a).
- (b) If there are any material factual disputes between the Parties or other issues arising from the Parties' Statement of Case or Statement of Reply, the CDB may order such additional procedural steps or give such directions as the CDB considers appropriate to address such disputes or other issues, with a view to proportionality and the Parties' desire to resolve Disputes in a cost-effective and expeditious manner.
- (c) Without limiting Section 4.9(b), the CDB may, if necessary, appoint one or more experts after considering the positions of the Parties or, subject to Section 1.3(b), obtain and consider the opinion of the Independent Certifier, as an expert.

#### **4.10 Hearings**

- (a) The CDB shall order that a hearing in respect of the Dispute take place unless the Parties and CDB agree in writing that a hearing is not required.
- (b) The hearing shall be conducted in Toronto, Ontario or by teleconference or videoconference on written agreement of the Parties and the CDB.
- (c) The Parties shall appear through duly authorized representatives. In addition, the Parties may be assisted or represented by advisers and legal counsel.
- (d) If any Party refuses or fails to take part in the CDB hearing or in any preceding steps, the CDB may proceed notwithstanding such refusal or failure.
- (e) The CDB may request that the Parties provide and exchange summaries of their argument in advance of the hearing.
- (f) Subject to the discretion of the CDB, the hearing shall proceed as follows:
  - (i) the Claimant shall present its case;
  - (ii) the Respondent shall present its case; and
  - (iii) the Claimant shall have an opportunity to reply.

#### 4.11 Basis for Decision

- (a) The CDB shall make decisions based on the Project Agreement and the law applicable to the Dispute.
- (b) The CDB may take into account:
  - (i) any failure of a Party to comply with the Project Agreement, including any of its mitigation obligations or its procedural obligations under this Schedule 27; and
  - (ii) any unreasonable delay of the Claimant in bringing its claim, including any unreasonable delay that prevented or prejudiced the Respondent's proper investigation of, opportunity for mitigation of, or ability to respond to the claim.
- (c) A decision of the CDB shall be in writing and state the findings, reasons, and determination of the CDB and include:
  - (i) a summary of the Dispute, the positions of the Parties and the decision requested; and
  - (ii) a summary of the relevant provisions of the Project Agreement and the relevant facts and law considered by the CDB.
- (d) The CDB shall issue its decision promptly and, in any event, within 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 shared equally 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 30 days of the release of the CDB's decision (or such longer period agreed by the Parties, acting reasonably) (the “**Arbitration Referral Period**”), deliver a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c). The decision of the CDB shall be stayed during the Arbitration Referral Period. If the Dispute is arbitrated pursuant to Section 5, the arbitration tribunal shall conduct the arbitration *de novo* and the decision of the CDB shall not, subject to the following sentence, be binding on the Parties. If neither Party delivers a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c) before the expiry of the Arbitration Referral Period, or if any arbitration that is commenced pursuant to Section 5 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 5, then the decision of the CDB shall be final and binding on the Parties.
- (b) The Parties agree that any decision of the CDB that becomes final and binding on the Parties in accordance with Section 4.13(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Dispute resolved by the CDB.

#### 5. Arbitration

- (a) Prior to the CDB Expiry Date, if the Parties fail to resolve a Dispute through the processes set out in Sections 2 and 3 or Sections 2 and 4 (if and as applicable) and where no final and binding Adjudication determination or final and binding CDB decision exists in respect of the Dispute, then, subject to Section 1.2(b), the Dispute shall be resolved by *de novo* arbitration in accordance with this Section 5.
- (b) 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 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 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 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 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 60 days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties in writing and accepted by the arbitral tribunal.
- (m) The costs of the arbitration are within the discretion of the arbitral tribunal. In exercising discretion to award costs, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- (n) The award of the arbitral tribunal shall be final and binding upon the Parties and not subject to appeal.

## 6. Litigation

- (a) If necessary to prevent irreparable harm to a Party, including in connection with a Public Safety Dispute, nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the Ontario Superior Court of Justice, including seeking an interlocutory injunction. However, the Parties agree that no irreparable harm shall occur if the Project Agreement is terminated by Contracting Authority pursuant to Section 35.3(b) of the Project Agreement, 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 this Schedule 27 that Contracting Authority was not entitled to do so in accordance with the Project Agreement.
- (b) Either Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding appointment of the challenged or a proposed alternative Member or arbitrator.
- (c) All litigation permitted pursuant this Schedule 27 shall be resolved in the Ontario Superior Court of Justice. Both Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any Disputes or matters which arise under the Project Agreement or in connection with the Project and which are to be resolved by litigation.

## 7. Stay and Consolidation with Third Party Disputes

- (a) Subject to Section 7(c), if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third



Party Arbitration(s) but only if each of Contracting Authority, Project Co, and the other parties all agree in writing.

- (b) Subject to Section 7(c), if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
  - (i) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
  - (ii) the other Party is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of the Third Party Litigation.

- (c) Sections 7(a) and 7(b) only apply:
  - (i) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
  - (ii) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

## 8. Confidentiality

- (a) Unless otherwise agreed by the Parties in writing or required by law, no Party shall rely on or introduce as evidence in any subsequent proceeding or investigation, and shall treat as confidential and inadmissible in any arbitration or litigation proceeding or other investigation or proceeding, any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered:
  - (i) on a without prejudice basis, including through the process for the amicable resolution of the Dispute by the Party Executives set out in Section 2;



- (ii) through the Adjudication process by any party or the Adjudicator, except in relation to the determination and reasons of the Adjudicator, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s); or
  - (iii) through the decision process by any Party or the CDB or any Member, except for a decision and reasons of the CDB, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s).
- (b) Any Member or arbitrator appointed pursuant this Schedule 27 shall keep all information about any Dispute(s) referred to the CDB or for arbitration confidential and shall not disclose such information to anyone other than the Parties.
  - (c) Any Adjudicator or arbitrator shall execute non-disclosure agreements in a form satisfactory to the Parties, providing that, among other things, material delivered by a Party in connection with an 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, a 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.

**APPENDIX “A”**

**FORM OF CDB MEMBER STATEMENT OF ACCEPTANCE, AVAILABILITY,  
IMPARTIALITY AND INDEPENDENCE**

**TO: HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the  
Minister of Transportation**

**and**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the  
Minister of Transportation as represented by Ontario Infrastructure and Lands  
Corporation**

**(hereinafter referred to as “Contracting Authority”)**

**AND TO: HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the  
Minister of Infrastructure**

**AND TO: GIP HWY 3 INC., (“Project Co”)**

**RE: Project agreement (as amended, supplemented or modified from time to time, the  
“Project Agreement”) dated the 18<sup>th</sup> day of May, 2023 between Contracting  
Authority and (“Project Co”) in respect of the Highway 3 Widening Project –  
Essex to Leamington project**

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**1. GENERAL**

**1.1 Name and Position**

- (a) **Family Name(s):**
- (b) **Given Name(s):**
- (c) **Member Position (circle one):      Technical      Chair**
- (d) Please attach a current copy of your CV.

**1.2 Definitions, Interpretation and Governing Law**

- (a) This statement (the “**Statement**”) shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement, and governed by the laws of Ontario, without regard to conflict of laws provisions. Please initial below all relevant statements.

**1.3 Acceptance**

(a) I accept to serve as a Member in accordance with the Project Agreement.

**Initial:** \_\_\_\_\_

(b) I decline to serve as a Member in accordance with the Project Agreement. *(If you tick here, simply date and sign the form without completing any other sections).*

**Initial:** \_\_\_\_\_

**1.4 Availability**

(a) I confirm, on the basis of the information presently available to me that I have received and reviewed a copy of Schedule 27 – Dispute Resolution Procedure to the Project Agreement and can devote the time necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities as diligently, efficiently and expeditiously as possible in accordance with the timelines and procedures set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

**Initial:** \_\_\_\_\_

(b) I understand that it is important to discharge the duties of a Member set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement as promptly as reasonably practicable. My current and anticipated professional roles and significant engagements are set out below for the information of the Parties (anonymized as necessary to remain compliant with my professional obligations).

**Initial:** \_\_\_\_\_

Number of currently pending matters or roles in which I am involved (*i.e. arbitrations and dispute board activities pending now, not previous experience; additional details you wish to make known to the Parties in relation to these matters can be provided on a separate sheet*):

	<b>As tribunal or dispute board chair / sole arbitrator / sole DB member</b>	<b>As co-arbitrator / co-dispute board member</b>	<b>As counsel</b>	<b>As other</b>
Standing dispute boards				
Ad-hoc dispute boards				
Arbitrations				

Court litigation (e.g. international commercial courts)				
Other (attach separate sheet if necessary)				

I have attached a calendar showing for the next 24 months all currently scheduled hearings and other existing commitments (anonymized as necessary) that would prevent me from attending meetings or sitting in a hearing on this Project.

I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

- (c) I shall make best efforts to maintain the availability necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities which require my involvement, and shall immediately disclose in writing to the Parties and the other Members any additional significant matters that I may become involved in and any other relevant information regarding my availability which may arise in the course of my tenure as a Member and which may materially affect my ability to discharge my duties as a Member.

**Initial:** \_\_\_\_\_

**1.5 Independence and Impartiality**

- (a) In deciding which disclosure method applies to you, you should take into account, whether there exists any past, present or future, anticipated or planned relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the Parties, their lawyers or other representatives, or related entities and individuals. You are also required to disclose all recent, professional or personal, relationships with all key members of all Parties. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying inter alia relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.
  - (i) **Nothing to disclose:** I am impartial and independent of the Parties and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they

might be of such a nature as to call into question my independence in the eyes of any of the Parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Initial:** \_\_\_\_\_

- (ii) **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

I confirm that the matters disclosed above represent full and complete disclosure with respect to any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality.

**Initial:** \_\_\_\_\_

- (b) I shall make best efforts to maintain the independence and impartiality necessary to discharge the duties of a Member throughout the entire duration of the CDB's anticipated activities, but shall immediately disclose in writing to the Parties and the other Members any facts or circumstances concerning my impartiality or independence which may arise in the course of my tenure as a Member.

**Initial:** \_\_\_\_\_

- (c) In accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement, I understand that the Parties may exercise their right to challenge me on the basis of an alleged lack of impartiality, independence or qualifications. In the event that I do not withdraw and the other Party does not agree to the challenge, I understand that the challenge shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement.

**Initial:** \_\_\_\_\_

- (d) In the event that I am successfully challenged, I understand that I will be removed from the CDB forthwith and that my CDB Member Agreement shall be terminated.

**Initial:** \_\_\_\_\_

**1.6 Delivery**

- (a) This Statement may be delivered by sending a fully executed copy by electronic mail or other electronic transmission to the Parties, and such delivery shall be as effective as the manual delivery of this executed Statement.

***[SIGNATURE PAGE FOLLOWS IMMEDIATELY]***

Date:

Signature:

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**APPENDIX “B”****FORM OF CDB MEMBER AGREEMENT**

This CDB Member Agreement (the “**Agreement**”) is entered into between:

- (a) **CDB Member:** *[Note: Full name and title of Technical Member or CDB Chair]* (the “**Member**”);
- (b) **Party 1:** HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the Minister of Transportation and HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”); and
- (c) **Party 2:** GIP HWY 3 INC., (“**Project Co**”)

(collectively, the “**Undersigned Parties**”).

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into an agreement dated [**date of the Project Agreement**] (the “**Project Agreement**”) for the Highway 3 Widening Project – Essex to Leamington (the “**Project**”);
- B. Schedule 27 – Dispute Resolution Procedure of the Project Agreement provides for the appointment of a Combined Dispute Board (the “**CDB**”), and that the CDB shall, *inter alia*, issue decisions and perform other tasks in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement (the “**CDB Services**”);
- C. Certain Disputes may be referred to the CDB for determination in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement; and
- D. The undersigned individual has been appointed to serve on the CDB as a Member.

The Member and the Parties therefore agree as follows:

**1.1 Definitions and Interpretation**

- (a) This Agreement shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement and defined terms shall have the same meaning as in the Project Agreement, unless otherwise specified here.
- (b) If there is any conflict between this Agreement and Schedule 27 – Dispute Resolution Procedure to the Project Agreement, this Agreement will take precedence to the extent of the conflict.

## 1.2 Undertaking

- (a) The Member shall act as **[a Technical Member / the CDB Chair]** and hereby agrees to perform the duties of a Member and provide the CDB Services in accordance with the terms of the Project Agreement and the terms of this Agreement.
- (b) The Member confirms that he or she is and shall remain impartial and independent of the Parties.
- (c) The Member further confirms that he or she has executed and will comply with the terms of the CDB Member Statement.

## 1.3 Composition of the CDB and Contact Details

- (a) Subject to Section 4 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the CDB shall be composed of three independent and impartial Members.
- (b) The Member can be contacted as follows:

**Member:** *[Note: Include name, address, telephone, email and any other contact details]*

- (c) The **[CDB Chair]** (if applicable) is listed below and can be contacted as follows:

**CDB Chair:** *[Note: Include name, address, telephone, email and any other contact details]*

- (d) The **[other Technical Members]** are listed below and can be contacted as follows:

**Technical Member:** *[Note: Include name, address, telephone, email and any other contact details]*

- (e) The Parties to the Project Agreement are those indicated above with the following contact details:

- (i) **Party 1:** *[Note: Include contact information]*

- (ii) **Party 2:** *[Note: Include contact information]*

- (f) Any changes in these contact details shall be immediately communicated to all other Undersigned Parties.

## 1.4 Qualifications

- (a) The Parties recognise that the Member is a <\*>, in accordance with Section 4.1(c) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.



- (b) The Parties recognise that the Member is independent, impartial and skilled in resolving and deciding disputes of a type, complexity and value commensurate with the Dispute(s) likely to be referred to the CDB, in accordance with Section 4.1(d) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

### 1.5 Fees and Disbursements

- (a) In consideration of the Member performing the CDB activities in accordance with this Agreement and Schedule 27 – Dispute Resolution Procedure of the Project Agreement, the Member shall be entitled to be paid the 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 Member provided pursuant to Section 1.6(a).
- (c) The Initial Fee shall cover:
- (i) reviewing and becoming and remaining familiar with the Project Agreement, including without limitation, Schedule 15 – Output Specifications to the Project Agreement and Schedule 27 – Dispute Resolution Procedure to the Project Agreement;
  - (ii) reviewing any amendments to the Project Agreement and Variation Confirmations;
  - (iii) attending orientation meetings with the Parties in respect of the Project;
  - (iv) reviewing progress reports, correspondence from the Parties, and other documents which the CDB is required to review pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement;
  - (v) reviewing specific documents which the CDB requests for its review;
  - (vi) attending internal CDB meetings;
  - (vii) managing and coordinating the operation of the CDB; and
  - (viii) 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 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) Any non-productive ad-hoc travel shall be reimbursed at half the hourly rate of the Member’s Ad-hoc Hourly Fee.

- (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 Initial 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, which invoice shall reflect the performance of the CDB activities performed in the pervious 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 30 days of the receipt by the Parties of an invoice provided by the Member in accordance with this Agreement.

## 1.7 Duration and Termination of the Agreement

- (a) Subject to Section 3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member agrees to serve for the duration of the CDB to the extent reasonably possible.
- (b) The Parties may at any time, without cause and with immediate effect, jointly terminate this Agreement.
- (c) The Member may terminate this Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the Member in writing.
- (d) If the Member is successfully challenged in accordance with Section 4.3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member shall be removed forthwith from the CDB and this Agreement shall be terminated.

- (e) The Member shall be entitled to claim payment for work performed to the date of termination of this Agreement in accordance with this Agreement, but shall not be entitled to claim any further payment.

### **1.8 Indemnity**

- (a) The Parties shall jointly and severally indemnify and hold harmless the Member from any claims of third parties for anything done or omitted to be done in the discharge of the Member's activities under this Agreement.
- (b) The indemnity provided in Section 1.8(a) shall not extend to:
- (i) any act or omission of the Member that is shown to have been in bad faith;
  - (ii) any breach of this Agreement by the Member,
  - (iii) any negligent or unlawful act or omission or willful misconduct of the Member;
  - (iv) any action taken by the Member outside the scope of authority set forth in this Agreement; or
  - (v) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Member.
- (c) The indemnity provided in Section 1.8(a) shall survive the termination of this Agreement.

### **1.9 Confidentiality**

- (a) The Member and all of the member's affiliates, employees, servants and agents shall keep all information about the Project, the Member's involvement on the Project, any CDB Services performed by the CDB, and any Dispute(s) referred for a CDB decision strictly confidential and shall not disclose such information to anyone other than the Parties.
- (b) The Member shall treat as confidential any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered on a without prejudice basis or through the CDB decision process by any other Party or the CDB or any Member, except as set out in Section 8(a)(ii) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.
- (c) Material delivered by a Party in connection with a CDB decision shall not be disclosed to any person or used, copied, supplied or reproduced for any other purpose other than for the performance of the CDB Services, and all such material shall remain the property of the Party disclosing or delivering same.

- (d) The Member shall be bound by and shall comply with the confidentiality and communication provisions set out in Section 49 of the Project Agreement.
- (e) The Parties may at any time require the Member to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the CDB Services to give written undertakings, in the form of confidentiality agreements on terms required by the Parties, relating to the non disclosure of confidential information, in which case the Member must promptly arrange for such agreements to be made.

#### **1.10 Disputes and Applicable Law**

- (a) All disputes arising out of this Agreement which are not subject to resolution pursuant to Section 6(b) of Schedule 27 – Dispute Resolution Procedure to the Project Agreement shall be finally settled by arbitration by one arbitrator agreed by the Undersigned Parties in writing or appointed in accordance with the *Arbitration Act, 1991*. This Agreement shall be governed by the laws of Ontario, without regard to conflict of laws provisions. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

#### **1.11 Counterparts**

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

*[Remainder of page intentionally left blank]*

This Agreement is entered into on [specify date] at [specify place].

[signature]

Member

[signature]

GIP HWY 3 INC.

[signature]

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO as represented by the Minister of  
Transportation**

[signature]

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO as represented by the Minister of  
Transportation as represented by Ontario  
Infrastructure and Lands Corporation**

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**SCHEDULE 28****REFINANCING****1. DEFINITIONS**

1.1 The following terms shall have the following meanings:

(a) **“Exempt Refinancing”** means:

- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
- (ii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
- (iii) any Qualifying Bank Transaction;
- (iv) any Rescue Refinancing;
- (v) any Refinancing that was approved by Contracting Authority prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
- (vi) any amendment, variation or supplement of any Lending Agreement approved by Contracting Authority as part of any Variation under this Project Agreement; or
- (vii) any Permitted Borrowing.

(b) **“Qualifying Bank”** means a lending institution that is:

- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
- (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that, in each case, controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person.

(c) **“Qualifying Bank Transaction”** means:

- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
- (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or

- 
- (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (d) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
  - (ii) entering into any new Lending Agreement;
  - (iii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
  - (iv) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
  - (v) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (f) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to Contracting Authority, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
  - (ii) any changes in structure and funding since the date of this Project Agreement;
  - (iii) the performance of the Works to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (g) **“Refinancing Gain”** means an amount equal to the greater of zero and  $(A - B)$ , where:

A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing).

B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).

- (h) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of Contracting Authority, whether actual or potential.

## 2. REFINANCING

### 2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of Contracting Authority, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered notice of such Refinancing to Contracting Authority at least ten Business Days before such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

### 2.2 Contracting Authority may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of Contracting Authority, whether actual or contingent, present or future, known or unknown.



- 2.3 Contracting Authority shall be entitled to receive:
- (a) a [REDACTED] % share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
  - (b) a [REDACTED] % share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
  - (c) a [REDACTED] % share of any further Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide Contracting Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. Contracting Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from Contracting Authority, provide any information in relation to a proposed Refinancing as Contracting Authority may reasonably require. Project Co shall keep Contracting Authority informed as to any changes to the terms of the Refinancing. Both Contracting Authority and Project Co shall at all time act in good faith with respect to any Refinancing.
- 2.5 Contracting Authority's share of the Refinancing Gain shall be received as a reduction in the amount of the Substantial Completion Payment.
- 2.6 Contracting Authority and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain. If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of Contracting Authority's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. Both Contracting Authority and Project Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse Contracting Authority for all such reasonable out-of-pocket costs incurred by Contracting Authority.

**SCHEDULE 29**

**FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR**

**THIS GUARANTEE** is made as of the 18<sup>th</sup> day of May, 2023

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister  
of Transportation

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister  
of Transportation as represented by Ontario Infrastructure and Lands Corporation

(hereinafter referred to as “**Contracting Authority**”)

**AND:**

[REDACTED]

(“**Construction Guarantor**”)

**WHEREAS:**

- A. Contracting Authority and GIP HWY 3 Inc. (“**Project Co**”) have entered into a project agreement dated as of the 18<sup>th</sup> day of May, 2023 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- B. As an inducement to Contracting Authority to enter the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (as such term is defined in Section 1.1(c) of this Guarantee), and in furtherance thereof has agreed to enter into this Guarantee.

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

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Guarantee, the term “**Design and Construction Work**” means:
  - (i) subject to Section 1.1(c)(ii) below, all of Project Co’s covenants, obligations and activities with respect to the Works pursuant to the Project Agreement, and including, for certainty:
    - (A) all of Project Co’s covenants, obligations and activities pursuant to Sections 11.14 (Defective Works), 11.15 (Warranty Obligations) and 11.16 (Prompt Repair of Warranty Work) of the Project Agreement; and
    - (B) Project Co’s representations and warranties contained in Article 6 of the Project Agreement, except for:
      - (1) Section 6.1(a)(ix), which for the purposes of this Guarantee shall be amended by replacing “Project Co Event of Default” with “Project Co Construction Event of Default” as such term is defined in Schedule 1 to the Project Agreement, and
      - (2) Section 6.1(a)(xxi), which for the purposes of this Guarantee shall be excluded from the definition of “Design and Construction Work” in accordance with Section 1.1(c)(ii)(5) below;
  - (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 Project Co under the Project Agreement (including the delivery of any executed originals of the documents referred to below):
    - (1) any covenant, agreement, undertaking or obligation related to the Financing or the Cost of the Financing;
    - (2) the recitals to the Project Agreement;
    - (3) Article 2;
    - (4) Sections 4.2, 4.3, 4.4 and 4.10;
    - (5) Section 6.1(a)(xxi);

- (6) Sections 8.3 and 8.4;
  - (7) Section 35.1(a)(iv);
  - (8) Sections 48.3(c) and (d);
  - (9) Article 50;
  - (10) Schedule 2 – Completion Documents;
  - (11) Schedule 4 – Lenders’ Direct Agreement;
  - (12) any of Project Co’s obligations under Schedule 5 – Construction Contractor’s Direct Agreement;
  - (13) Schedule 3 – Subcontractor’s Direct Agreement;
  - (14) Schedule 29 – Performance Guarantee of Construction Guarantor;
  - (15) Schedule 23 – Compensation on Termination;
  - (16) Schedule 24 – [REDACTED]; or
  - (17) Schedule 31 – Project Co Information.
- (d) For the purpose of this Guarantee, the Term “**DB Guarantee**” means the performance guarantee delivered by Construction Guarantor in its capacity as guarantor under the DB Guarantee (the “**DB Guarantor**”) in favour of Project Co and assigned to the Senior Lenders pursuant to the Lending Agreements.

## 1.2 Survival

This Guarantee shall survive the termination or other expiry of the Project Agreement.

## 2. GUARANTEE

### 2.1 Guarantee

- (a) Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement which are not expressly defined in this Section 2.1(a).

- (b) Notwithstanding any other provision of this Guarantee:
  - (i) Construction Guarantor's undertakings and obligations are derivative of and not in excess of Project Co's obligations under the Project Agreement and Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the Parties' performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non-observance by Project Co of the Guaranteed Obligations arises out of or is a result of a Contracting Authority Event of Default as set out in section 36.1(a) of the Project Agreement; and
  - (ii) in no event shall the aggregate liability of the Construction Guarantor under this Guarantee and the DB Guarantor under the DB Guarantee exceed the maximum liability of the DB Guarantor under the DB Guarantee, but this limit of liability shall not extend to interest and enforcement costs payable under this Guarantee.

## **2.2 General Provisions Relating to the Guarantee**

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Project Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Project Agreement and Construction Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to Construction 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 or Construction Guarantor or any sale, lease or transfer of any of the assets of Project Co or Construction Guarantor;
  - (iii) any Change in Ownership of Project Co or Construction Guarantor;
  - (iv) the termination or other expiry of the Project Agreement;

- (v) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
  - (vi) any change in the financial condition of Project Co or Construction Guarantor;
  - (vii) any Project Co Event of Default described in Section 35.1(a)(i) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;
  - (viii) any lack or limitation of power, incapacity or disability on the part of Project Co or any other irregularity, defect or informality on the part of Project Co with respect to the Guaranteed Obligations;
  - (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
  - (x) the exercise of any rights under the Lending Agreements, including the right of Lenders to cure any Project Co Event of Default by or on behalf of Project Co hereunder and/or to assume the obligations of Project Co and complete the Design and Construction Work in the manner provided in the Project Agreement;
  - (xi) the assignment by Contracting Authority in accordance with the provisions of Section 48.2 of the Project Agreement; or
  - (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Construction Guarantor.
- (d) The obligations and liabilities of Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co or Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) Contracting Authority shall not be bound to exhaust its recourse against Project Co or others or any securities (including the Security described in Schedule 25 of the Project Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantor and Construction Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose hereof that Construction 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, Construction Guarantor hereby

waives notice of acceptance of this Guarantee and of the non-performance by Project Co, diligence, presentment, protest, dishonour, demand for performance from Contracting Authority and notice of non-performance or failure to perform on the part of Project Co and all other notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Construction Guarantor liable hereunder, there shall be no obligation on the part of Contracting Authority at any time to demand or resort for performance to Project Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Project Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and Contracting Authority shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Project Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Project Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.

- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of Construction Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to Construction Guarantor, Contracting Authority may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Project Co and/or Construction 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.
- (h) 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. Construction Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of Construction Guarantor to Contracting Authority do not merge with or end Construction Guarantor's obligations hereunder.
- (i) The liability of Construction Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Construction Guarantor.
- (j) Construction Guarantor agrees to pay to Contracting Authority any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

### 3. REPRESENTATIONS AND WARRANTIES

#### 3.1 Construction Guarantor Representations and Warranties

- (a) Construction Guarantor represents and warrants to Contracting Authority that as of the date of this Guarantee:
  - (i) Construction Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, 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) Construction Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Ancillary Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Ancillary Documents to which it is a party to be done, executed, delivered or performed;
  - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its 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 the Ancillary Documents (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by Construction Guarantor and constitute legal, valid, and binding obligations of Construction Guarantor, enforceable against Construction Guarantor in accordance with their respective terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
    - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;



- (v) the authorization, execution, delivery and performance by Construction Guarantor of this Guarantee and the Ancillary Documents to which it is a party do not violate or conflict with, or constitute a default under:
  - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Construction Guarantor;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) **[REDACTED]**;
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Construction Guarantor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and Construction 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) Construction Guarantor is able to meet its obligations as they generally become due.

#### 4. NOTICES

##### 4.1 Notices to Parties

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

If to Contracting Authority:

Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3

Attn.: **[REDACTED]**  
Email: **[REDACTED]**

With a copy to:

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

Attn.: [REDACTED]  
Email:  
[REDACTED]

If to the Construction Guarantor:

[REDACTED]  
Attn: [REDACTED]  
Email: [REDACTED]

#### 4.2 Electronic Submission

Where any Notice is provided or submitted to a party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a party's failure to comply with this Section 4.2.

#### 4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such Notice unless a later effective date is given in such Notice.

#### 4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), (c) and (d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Article 4.

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

#### **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 Article 4.

### **5. GENERAL**

#### **5.1 Amendments**

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

#### **5.2 Waiver**

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

#### **5.3 Entire Agreement**

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement and the Ancillary Documents, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee, including the Request for Proposals.

#### **5.4 Severability**

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

## **5.5 Enurement**

This Guarantee shall enure to the benefit of, and be binding on, Contracting Authority and Construction Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the Construction Guarantor.

## **5.6 Governing Law and Jurisdiction**

- (a) This Guarantee shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Guarantee affects the rights, protections and immunities of the Crown under the Proceedings Against the Crown Act (Ontario).

## **5.7 Contracting Authority Designate**

- (a) At any time and from time to time, the Contracting Authority may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Guarantee and the Construction 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 Contracting Authority has notified the Construction Guarantor in writing that such designated person is no longer the person designated by the Contracting Authority 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 Contracting Authority shall advise the Construction 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. The Construction Guarantor acknowledge the right of the Contracting Authority to delegate administrative responsibilities hereunder as set forth in this Section 5.7.

## **5.8 Cumulative Remedies**

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

### **5.9 Further Assurance**

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

### **5.10 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

### **5.11 Language of Agreement**

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

### **5.12 Proof of Authority**

Contracting Authority and Construction 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 Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind Contracting Authority or Construction 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 Joint and Several**

If Construction Guarantor is comprised of more than one person, then each such person shall be jointly and severally liable for the obligations and liabilities of Construction Guarantor hereunder.

**5.15 Copyright Notice**

The parties acknowledge that the King’s Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO** as represented by the Minister of  
Transportation

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO** as represented by the Minister of  
Transportation as Represented by Ontario  
Infrastructure and Lands Corporation

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation

[CONSTRUCTION GUARANTOR]

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation



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**SCHEDULE 30**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 18<sup>th</sup> day of May, 2023

**AMONG:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

(hereinafter referred to as “**Contracting Authority**”)

– AND –

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

(the “**Lenders’ Agent**”)

– AND –

**GIP HWY 3 INC., [REDACTED]**

(“**Project Co**”)

– AND –

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

(the “**Account Trustee**”)

**WHEREAS:**

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Contracting Authority, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. Contracting Authority, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

D. Contracting Authority, the Lenders' Agent and Project Co have agreed that the Bonds are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement and that no releases of the original copy of the Bonds shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

## 1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (b) “**Appointed Representative**” has the meaning given in the Lenders' Direct Agreement.
- (c) “**Bank**” means [REDACTED].
- (d) “**Bonds**” means a performance bond issued by [REDACTED], in favour of Project Co, in the form attached to the Project Agreement as Appendix B to Schedule 25 – Insurance and Performance Security Requirements and a labour and material payment bond issued by [REDACTED], in favour of Project Co, in the form attached to the Project Agreement as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- (e) “**Business Day**” has the meaning given in the Project Agreement.
- (f) “**Change of Authorization Event**” has the meaning given in Section 9(a) of this Insurance Trust Agreement.
- (g) “**Change of Authorization Notice**” has the meaning given in Section 9(b)(ii) of this Insurance Trust Agreement.
- (h) “**Contracting Authority**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (i) “**Default Notice**” means a written notice given by the Lenders' Agent to the Account Trustee and Contracting Authority that an event of default under the Lending Agreements has occurred and is continuing.
- (j) “**Default Period**” means the period commencing on the date upon which the Account Trustee and Contracting Authority receives a Default Notice and ending on the date upon which the Account Trustee and Contracting Authority receives written notice from the Lenders' Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (k) “**Governmental Authority**” has the meaning given in the Project Agreement.

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- (l) **“Insurance Policies”** has the meaning given in Section 4 of this Insurance Trust Agreement.
- (m) **“Insurance Proceeds”** has the meaning given in Section 6(a) of this Insurance Trust Agreement.
- (n) **“Insurance Trust Account” [REDACTED]**
- (o) **“Insurance Trust Agreement”** means this Insurance Trust Agreement.
- (p) **“Lenders”** has the meaning given in the Project Agreement.
- (q) **“Lenders’ Agent”** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (r) **“Lenders’ Direct Agreement”** means the Lenders’ Direct Agreement made on or about the date hereof between Contracting Authority, Project Co and the Lenders’ Agent.
- (s) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (t) **“Multiple Obligee”** means a multiple obligee under the applicable Bond.
- (u) **“Multiple Obligee Rider(s)”** means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, Contracting Authority and the Lenders’ Agent are multiple obligees under the Bonds.
- (v) **“Notice Period”** has the meaning given in the Lenders’ Direct Agreement.
- (w) **“Order”** has the meaning given in Section 8(k) of this Insurance Trust Agreement.
- (x) **“Party”** means any of Contracting Authority, Project Co, the Lenders’ Agent or the Account Trustee, and **“Parties”** means all of Contracting Authority, Project Co, the Lenders’ Agent and the Account Trustee.
- (y) **“Project”** has the meaning given in the Project Agreement.
- (z) **“Project Agreement”** means the project agreement made on or about May 18, 2023 between Contracting Authority and Project Co.
- (aa) **“Project Co”** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (bb) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (cc) **“Replacement Project Agreement”** has the meaning given in the Lenders’ Direct Agreement.
- (dd) **“Replacement Project Co”** has the meaning given in the Lenders’ Direct Agreement.
- (ee) **“Step-In Notice”** has the meaning given in the Lenders’ Direct Agreement.
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- (ff) “**Step-In Period**” has the meaning given in the Lenders’ Direct Agreement.
  - (gg) “**Surety**” has the meaning given in the Project Agreement.
  - (hh) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

## 2. INTERPRETATION

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

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only and shall not constitute a part of this Insurance Trust Agreement or be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific

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enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

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

### 3. BONDS AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the original copy of the Bonds, the Insurance Trust Account and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the original copy of the Bonds and Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the original copy of the Bonds, the Insurance Trust Account and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Contracting Authority.
- (b) The Account Trustee shall not release the original copy of the Bonds or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, Contracting Authority, and Project Co agree that (x) if Project Co or the Lenders’ Agent receives the original copy of the Bonds, the Bonds will be enforced for the purpose of completion of the Project , and (y) if any of them either

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receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:

- (i) the repair, reinstatement, restoration or replacement of the Expansion Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Works in respect of which such Insurance Proceeds have been paid;
- (ii) the completion of the Project; or
- (iii) indemnification for any Contracting Authority loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if Contracting Authority is entitled to indemnification under the Insurance Policies in respect of any loss incurred by Contracting Authority, such related insurance proceeds are to be paid directly to Contracting Authority by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that Contracting Authority shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) or (ii) in respect of which such proceeds have been paid.

#### 4. DELIVERY OF ORIGINAL BONDS AND INSURANCE POLICIES

Project Co shall deliver, or cause to be delivered, to the Account Trustee an original copy of all Bonds. Project Co is required to obtain under the Project Agreement and certified copies or originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the original copy of the Bonds and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

#### 5. BONDS

- (a) If the Account Trustee and Contracting Authority have received a Default Notice, and if Lenders’ Agent presents to the Account Trustee (and the other parties to this Insurance Trust Agreement) a declaration that it or any person Lenders’ Agent designates requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from Contracting Authority confirming Lenders’ Agent’s right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to Lenders’ Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the original copy of the Bonds to Lenders’ Agent or a person

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designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and Contracting Authority presents to the Account Trustee a declaration that it or any person designated by it requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to Contracting Authority or such designated party, without the need for further investigation or inquiry by the Account Trustee that Contracting Authority or the designated party presenting the declaration is entitled to receive the original copy of the Bonds. Contracting Authority shall provide, no later than 5 Business Days following receipt by Contracting Authority of a request by the Lenders' Agent, either (i) the written authorization referred to in this Section 5(a); or (ii) written justification detailing Contracting Authority's rationale for refusing to provide such authorization.

- (b) Project Co agrees to obtain or cause to be obtained from the Surety any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) Contracting Authority, Lenders' Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lender's Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lender's Direct Agreement and this Insurance Trust Agreement, the provisions of the Lender's Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

## 6. INSURANCE PROCEEDS

- (a) Subject to Section 3(d), the Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or Contracting Authority (the "**Insurance Proceeds**") as follows:
  - (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
  - (ii) in the case of any property builders' risk "All Risk" insurance, boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
    - (A) if the Account Trustee has not received a Default Notice and:
      - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or

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- (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than \$[REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as Contracting Authority may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
- (iii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Contracting Authority, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 6(a) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
- (i) if the Account Trustee has not received a Default Notice, to Project Co; and
- (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, Contracting Authority, may at any time or from time to time direct in writing.
- (c) Each of Project Co, the Lenders' Agent and Contracting Authority shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co, Contracting Authority or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

## 7. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The



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Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.

- (b) The Account Trustee hereby agrees to promptly provide to Contracting Authority all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Contracting Authority may from time to time request in writing.

## 8. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, Contracting Authority or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, Contracting Authority or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Contracting Authority, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct,

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negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 8(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders or of Contracting Authority or of Project Co, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 8(b).
- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(e):
  - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account

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Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.

- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or Contracting Authority for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "Order"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, Contracting Authority and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, is ambiguous or uncertain, the Account Trustee may, in its sole discretion,

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refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, Contracting Authority, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by Contracting Authority shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Contracting Authority.
- (o) Each of the Lenders' Agent and Contracting Authority shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or Contracting Authority which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to this Section 8(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by email or facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to Section 8(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written

notice to Project Co and Contracting Authority, or any shorter period of time as agreed to by Project Co and Contracting Authority, notwithstanding the provisions of Section 8(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

## 9. LENDERS' AGENT AND CONTRACTING AUTHORITY RIGHTS TO DIRECT

- (a) Until the first to occur of:
- (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
  - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
    - (A) there has been no assignment to a Replacement Project Co;
    - (B) no Replacement Project Agreement has been entered into; or
    - (C) the Appointed Representative has not cured the Project Co Event of Default,
- (each, a "**Change of Authorization Event**")

the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and Contracting Authority shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and Contracting Authority shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that Contracting Authority shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the original copy of the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

## 10. TERMINATION

- (a) Subject to the provisions of Section 10(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have

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no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and

- (ii) the obligations of Project Co to Contracting Authority have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders' Agent, Contracting Authority, and Project Co have entered into a replacement Insurance Trust Agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and Contracting Authority.

## 11. ASSIGNMENT

The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, Contracting Authority and Project Co.

## 12. NOTICES

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

If to Contracting Authority: Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3

Attn.: [REDACTED]  
Email: [REDACTED]

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

Attn.: [REDACTED]  
Email: [REDACTED]

If to Project Co: GIP HWY 3 Inc.

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Attn: [REDACTED]

Email: [REDACTED]

If to the Account Trustee: [REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to the Lenders' Agent: [REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12(e), 12(f) and 12(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 12.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if a electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

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**13. AMENDMENTS**

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

**14. WAIVER**

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

**15. RELATIONSHIP BETWEEN THE PARTIES**

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

**16. ENTIRE AGREEMENT**

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

**17. SEVERABILITY**

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



**18. ENUREMENT**

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

**19. GOVERNING LAW AND JURISDICTION**

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

**20. CONTRACTING AUTHORITY DESIGNATE**

- (a) At any time and from time to time, Contracting Authority may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Insurance Trust Agreement and Project Co, the Lenders' Agent and the Account Trustee may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until Contracting Authority has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated person is no longer the person designated by Contracting Authority 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. Contracting Authority shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of Contracting Authority to delegate administrative responsibilities hereunder as set forth in this Section 20.

**21. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

**22. LANGUAGE OF AGREEMENT**

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

**23. COUNTERPARTS**

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

**24. COPYRIGHT NOTICE**

The Parties acknowledge that the King’s Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Insurance Trust Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO** as represented by the Minister of Transportation as represented by Ontario Infrastructure and Lands Corporation

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per: \_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation

**[LENDERS' AGENT]**

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation

**GIP HWY 3 INC.**

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation.

[ACCOUNT TRUSTEE]

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>  
Title: <\*>

I/We have authority to bind the corporation

**SCHEDULE 31**

**PROJECT CO INFORMATION**

**[REDACTED]**

**SCHEDULE 32**

**INTENTIONALLY DELETED**

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**SCHEDULE 33****WORKS REPORT REQUIREMENTS**

1. The Works Report shall include the following:
  - (a) an executive summary, including the current status of the Project;
  - (b) design and construction status, including upcoming submissions & resubmissions, design related meetings held with stakeholders, traffic management and closure status and plans;
  - (c) Current Progress Works Schedule;
  - (d) Works Schedule Progress Report, including a discussion on any potential delays to design packages or other Works Submittals as well as rationale for any potential delays;
  - (e) permits, including description of status of all permits and any associated consultation activities;
  - (f) construction progress;
  - (g) Look-ahead Schedule, including an updated Works Submittal register identifying the required submittals that are anticipated to be submitted to Contracting Authority during the 12 week period starting 15 Business Days following the end of a previous calendar month;
  - (h) the Construction Certificate (Interim), relevant to the reporting month;
  - (i) contractual outstanding decisions, including any potential schedule and/or commercial implications;
  - (j) environmental monitoring and compliance status (including but not limited to described in Schedule 17 – Environmental Obligations and the Environmental Frameworks), as well as any reported incidents or issues that caused environmental impacts such as spills;
  - (k) sustainability compliance status:
    - (i) sustainability measures implemented or to be implemented;
  - (l) quality assurance and quality control, including:
    - (i) a table setting out and responding to items of Non-Conformance, Construction Period Quality Failure (in accordance with Schedule 21) and deficiencies in ongoing Works as identified by Contracting Authority or Project Co or both;



- (ii) update of quality control and quality assurance activities and personnel responsible, including information on witness and hold points identified;
- (iii) monthly Quality Management System reports, Quality Audit reports and summary information from the Non-Conformance Tracking System (all as described in Schedule 11 - Quality Management); and
- (iv) internal and external audits;
- (m) organization / staffing changes and additions for Project Co and Construction Contractor;
- (n) status of all reports submitted pursuant to the requirements of the Project Agreement;
- (o) health and safety, including:
  - (i) the total number of hours worked for all persons on Site;
  - (ii) the total number of critical injuries 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 near misses (no damage to property or persons);
  - (vii) the total number of incidents resulting in lost time;
  - (viii) the total number of incidents with no lost time;
  - (ix) details of MOL and MECP enquiries and visits; and
  - (x) status or updates on Project Co's compliances with WSIB or COR requirements in the Project Agreement.
- (p) Subcontract status, including:
  - (i) consultants;
  - (ii) Subcontracts awarded;
  - (iii) tenders;

- (iv) labour report , including projection quantity of construction personnel on site, and updated workforce report including number of direct jobs created overall and projections in conjunction with the Current Progress Works Schedule including a workforce graph that depicts actual workforce against projected workforce per month to Final Completion; and
- (v) the number of apprentices who are providing services relating to the Project as of the date of the Works Report, and such information may be provided on a monthly basis but in any event not less frequent than on a quarterly basis;
- (q) financial status, including:
  - (i) all requirements of Schedule 21 – Liquidated Damages and Construction Enforcement;
  - (ii) progress and Variations;
  - (iii) insurance summary;
  - (iv) Construction Contractor default status;
  - (v) current cash flow status for both actual and projected expenditure (capital cost components), from Financial Close, represented monthly and excluding Variations;
  - (vi) 12-month (minimum) financial forecast including all Project Co costs; and
  - (vii) cash flow status (v) and financial forecast (vi) are to be provided per the Asset Category Breakdown as set out in Appendix A to this Schedule 33.
- (r) risk management, including:
  - (i) claims;
  - (ii) liens;
  - (iii) environmental issues;
  - (iv) labour;
  - (v) market conditions;
  - (vi) outstanding disputes;
  - (vii) operational risks; and
  - (viii) other risks; and

- (s) status of any commissioning activities.

## APPENDIX A

## ASSET CATEGORY BREAKDOWN

Asset Category	Common Items included in Transportation Infrastructure	
<b>Pavement and Road Surface</b>	<ul style="list-style-type: none"> <li>• Asphalt, pavements on highways and roads</li> <li>• Shoulders</li> <li>• Ramps</li> <li>• Turning lanes</li> </ul>	<ul style="list-style-type: none"> <li>Passing lanes</li> <li>Paving on structures</li> <li>Structure waterproofing</li> </ul>
<b>Road Subsurface</b>	<ul style="list-style-type: none"> <li>• Granular</li> <li>• Drainage</li> <li>• Ditches</li> <li>• Subdrains</li> <li>• Concrete culverts less than 3m opening</li> </ul>	<ul style="list-style-type: none"> <li>Steel culverts less than 3m opening</li> <li>Manhole</li> <li>Catch basins</li> </ul>
<b>Bridges and Structures</b>	<ul style="list-style-type: none"> <li>• Concrete culverts greater than 3m opening</li> <li>• Steel culverts greater than 3m opening</li> </ul>	<ul style="list-style-type: none"> <li>Noise Wall</li> </ul>
<b>Road Appurtenances</b>	<ul style="list-style-type: none"> <li>• Median barriers</li> <li>• Temporary concrete barriers</li> <li>• Noise and privacy barriers</li> <li>• Roadside protection: barriers, guiderail, cable barriers</li> <li>• Illumination and lighting</li> <li>• Signage</li> <li>• Curbs and gutter</li> <li>• Active Transportation Infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>Weather warning system</li> <li>Traffic signals</li> <li>Highway fencing</li> <li>Security and farm fencing</li> <li>Pavement markers/markings</li> <li>Minor landscaping</li> </ul>
<b>Land and Land Improvements</b>	<ul style="list-style-type: none"> <li>• Land for structures</li> <li>• Rock cuts</li> <li>• Grading and Backfilling</li> <li>• Berms</li> <li>• Retention ponds</li> <li>• Major landscaping</li> </ul>	
<b>Utilities</b>	<ul style="list-style-type: none"> <li>• Hydro line</li> <li>• Gas</li> </ul>	

**SCHEDULE 34**

**INTENTIONALLY DELETED**

**SCHEDULE 35**

**INTENTIONALLY DELETED**

**SCHEDULE 36**

**CONTRACTOR SITE SPECIFIC SAFETY MANUAL REQUIREMENTS**

**1. General Requirements**

The Contractor Site Specific Safety Manual shall, at a minimum, comply in all respects with:

- a) all applicable requirements of the *Occupational Health and Safety Act* (Ontario);
- b) industry best practices;
- c) health and safety requirements set by Project Co with respect to the Project and the Site, and
- d) health and safety requirements of the Project Agreement.

**2. Minimum Categories**

The Contractor Site Specific Safety Manual shall, at a minimum, contain narrative addressing the categories and sub-categories as set out below.

<b>1.0</b>	<b>Overview and Scope</b> The manual shall have an introduction that shall set out an overview and scope of the Project.
<b>2.0</b>	<b>Health and Safety Statement</b> A statement that shall refer to the safety goals of the project and the culture of safety planned to be implemented by the Construction Contractor.
2.1	Statement of Commitment by an Officer: this statement shall specifically refer to the manual itself and be executed by an officer of the Construction Contractor with authority to bind the Construction Contractor.
2.2	Project Company Mandate and OHS Policy
2.3	Statement of Commitment Regarding Keeping Subcontractors Responsible
2.4	Site Plot Plan: which shall include an illustration.
<b>3.0</b>	<b>Project Health and Safety Objectives and Performance Measurement</b> Description of methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met.
<b>4.0</b>	<b>Roles and Responsibilities</b> Description of the specific roles and responsibilities of the following individuals/entities in relation to meeting the health and safety objectives.
4.1	Project Co.
4.2	Project Director
4.3	Safety Manager
4.4	Construction Manager
4.5	Safety Coordinator
4.6	Joint Occupational Health and Safety Committee/Trades Committee
4.7	Subcontractor

4.8	Subcontractor Supervisor
4.9	Workers
4.10	Visitors
4.11	External Parties
4.12	Contact Sheet
<b>5.0</b>	<b>Sub-contractor Health and Safety Management Plan</b>
<b>6.0</b>	<b>Health and Safety Training &amp; Competency</b> Description of the training program to be implemented to ensure that all persons who will be entering and/or working on the Site are appropriately trained.
6.1	Site Specific Orientation
6.2	Project Specific Orientation
6.3	Worker Training to Specific Site Hazards
6.4	Visitor/Short Duration Work Orientation
6.5	Personal Protective Equipment: identify the minimum PPE that will be required on-site)
6.6	Delivery Driver/Supplier Orientation
6.7	Worker/ Supervisor Competency and Evaluation: describe how competency of workers and supervisors will be identified, met and evaluated on an on-going basis.
<b>7.0</b>	<b>Meetings and Communication Plan</b> Description of frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties.
<b>8.0</b>	<b>Emergency Response Plan</b> Description of measures to respond to injuries and accidents.
8.1	Emergency Contacts and Roles
8.2	Emergency Evacuation Plan
8.3	Emergency Response Procedure
8.4	Property, Equipment and Environmental Damage Procedure
8.5	First Aid
8.6	Drills and Exercises
<b>9.0</b>	<b>Inspections and Audits</b> Description of the Construction Contractor’s strategy for implementing an inspection regime in relation to health and safety on the Site.
9.1	Informal Inspections
9.2	Formal Inspections
9.3	Audits
9.4	Inspection and Audit Schedule
9.5	Inspection Follow-up/Corrections Action Plan
9.6	Maintenance of Records
<b>10.0</b>	<b>Incident Reporting and Investigations Procedure</b> Description of the procedure for reporting incidents, proactive investigations intended to prevent future incidents and measures to resolve the incident.



<b>11.0</b>	<b>Rules of Conduct and Disciplinary Actions</b> Description of disciplinary actions to be taken in the case of health and safety infractions.
11.1	Drugs and Alcohol
11.2	Workplace Violence and Harassment
11.3	Disciplinary Action
11.4	Workers’ Rights
<b>12.0</b>	<b>Security Plan</b> Provision of a plan that details guidelines for implementing safety on the Site.
12.1	Methodology for Securing the Site and Restricting Trespassers
<b>13.0</b>	<b>Hazard Identification and Control</b>
13.1	Hazard Identification and Control
13.2	Designated Substances
13.3	Task Safety Analysis
13.4	Job Hazard Analysis: analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. It focuses on the relationship between the worker, the task, the tools, and the work environment. It breaks down the job in smaller steps to examine potential hazards and potential preventative steps.
13.5	Project Specific Health and Safety Requirements: provide a project-specific health and safety risk register which details any unique safety requirements of the Project.
<b>14.0</b>	<b>Traffic Management and Control Plan</b>
<b>15.0</b>	<b>Others</b>