

**PROJECT AGREEMENT  
(EXECUTION VERSION)**

**TO DESIGN, BUILD AND FINANCE THE  
AIRPORT RAIL LINK SPUR PROJECT**

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**Confidential**

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Schedule 7	-	[Intentionally Deleted]
Schedule 8	-	List of Project Co Parties
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Performance Guarantee of Construction Guarantor
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Legal Description of Site and Title Encumbrances
Schedule 17	-	Works Report Requirements
Schedule 18	-	Communications Protocol
Schedule 19	-	Heritage Guidelines and Protocols
Schedule 20	-	Payments and Holdbacks
Schedule 21	-	Form of Assignable Subcontract Agreement
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Financial Model
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Standby Letter of Credit
Schedule 29	-	Warranty Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	[Intentionally Deleted]
Schedule 33	-	Transfer of Metrolinx Obligations to the GTAA onto Project Co

**THIS PROJECT AGREEMENT** is made as of the 15<sup>th</sup> day of December, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16

**AND:**

**AIRLIX TRANSIT PARTNERS INC.**, a corporation incorporated under the laws of Ontario

**(“Project Co”)**

**WHEREAS:**

- A. HMQ wishes to procure the design, construction and financing of the ARL Spur Line and ARL T1 Station (the “**Project**”).
- B. HMQ and Project Co wish to enter into this Project Agreement which sets out the terms and conditions upon which Project Co shall perform the Works.
- C. The overriding priorities of HMQ in entering into and implementing this Project Agreement are to achieve complete design, construction and integration of the ARL Spur Line and the ARL T1 Station with existing GTAA infrastructure by July 31, 2014 in order to ensure full commercial operation of the ARL Service prior to the Pan/Parapan American Games.
- D. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MOI’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector (the “**IPFP Framework**”).
- E. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
  - 1. The public interest is paramount.
  - 2. Value for money must be demonstrable.
  - 3. Appropriate public control/ownership must be preserved.
  - 4. Accountability must be maintained.

5. All processes must be fair, transparent and efficient.
- F. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of public assets will be preserved in the public sector.
- G. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that HMQ and Project Co work collaboratively, responsibly and cooperatively throughout the duration of this Project Agreement.

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

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions and Interpretation**

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

<b>Schedule No.</b>		<b>Description</b>
Schedule 1	-	Definitions and Interpretation
Schedule 2	-	Completion Documents
Schedule 3	-	Design and Construction Contract
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	Assignable Subcontract Agreement for Design and Construction Contract
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	[Intentionally Deleted]
Schedule 8	-	List of Project Co Parties
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Performance Guarantee of Construction Guarantor
Schedule 13	-	Project Co Proposal Extracts

Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Legal Description of Site and Title Encumbrances
Schedule 17	-	Works Report Requirements
Schedule 18	-	Communications Protocol
Schedule 19	-	Heritage Guidelines and Protocols
Schedule 20	-	Payments and Holdbacks
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Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Financial Model
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Standby Letter of Credit
Schedule 29	-	Warranty Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	[Intentionally Deleted]
Schedule 33	-	Transfer of Metrolinx Obligations to the GTAA onto Project Co

- (c) The documents comprising the Contract Documents 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 conflict, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, HMQ or anyone else (including anyone pursuant to Schedule 27 - Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the 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 HMQ, no consent, approval or satisfaction of HMQ or the HMQ Representative shall be unreasonably withheld or delayed. If it is specifically provided

that a consent, approval or satisfaction may be given or withheld in the Sole Discretion of HMQ, it may be given or withheld in the sole, absolute and unfettered discretion of HMQ, which may be arbitrarily exercised without any requirement to provide reasons or explanations, whatsoever (“**Sole Discretion**”).

- (f) Neither the organization of the Output Specifications into divisions, sections and parts shall 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 and the other Contract Documents, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently, unless otherwise expressly provided therein or herein:
- (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 and the other Contract Documents expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 Definitions and Interpretation;
  - (v) Schedule 27 Dispute Resolution Procedure;
  - (vi) Schedule 20 Payments and Holdbacks;
  - (vii) Schedule 15 Output Specifications;
  - (viii) Schedule 33 Transfer of Metrolinx Obligations to the GTAA onto Project Co
  - (ix) Schedule 25 Insurance and Performance Security Requirements;
  - (x) Schedule 22 Variation Procedure;
  - (xi) Schedule 10 Review Procedure;
  - (xii) Schedule 14 Outline Commissioning Program;
  - (xiii) Schedule 11 Design Quality Plan and Construction Quality Plan;
  - (xiv) Schedule 23 Compensation on Termination;

- (xv) Schedule 26 Record Provisions;
  - (xvi) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xvii) 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 HMQ, upon discovery of same, shall immediately give notice to the HMQ Representative. The HMQ Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) HMQ and Project Co shall comply with the determination of the HMQ Representative pursuant to this Section 1.2 unless HMQ or Project Co disputes the decision of the HMQ Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (e) Notwithstanding anything to the contrary in this section 1.2, it is the intention of the Parties to the Project Agreement that Project Co shall satisfy all obligations required to be performed by Project Co as set out in Schedule 33 in addition to the obligations of Project Co otherwise identified in the Project Agreement.

### **1.3 Conflict of Documents**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among 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 HMQ 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. No review by HMQ of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by HMQ, and this Project Agreement and the Lenders' Direct Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

### **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, 2.5, 2.6, 3.1, 5 to 15, 16.5, 17 to 23, 25-29, 39-51, and Schedules 1, 2, 8 to 13, 16, 18, 19, 22, 24, and 25-28 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) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to HMQ an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of \$[REDACTED] substantially in the form of Schedule 28 - Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by HMQ in accordance with the provisions of this Project Agreement, HMQ shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

### **2.3 Financial Close**

- (a) Prior to Financial Close, Project Co shall deliver drafts of the Lending Agreements to HMQ in order to give HMQ a reasonable opportunity to review the draft Lending Agreements and in any event, not later than the time set out in Section 2.5(a)(iv).
- (b) On or before the Financial Close Target Date:
- (i) subject to Section 2.6, Project Co shall deliver to HMQ the documents referred to in Section 1 of Schedule 2 – Completion Documents; and
  - (ii) subject to Section 2.5, HMQ shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 – Completion Documents.
- (c) As contemplated under Section 10.3.2 of the Request for Proposals, Project Co shall, no later than 10 days following written instruction from HMQ on or after Financial Close, pay the Design and Bid Fee amount plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals), as directed by HMQ. If Project Co is directed to pay the Design and Bid Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.

## **2.4 Forfeiture of Standby Letter of Credit**

- (a) Subject to Section 2.4(b), if Project Co fails to achieve, through no default of HMQ, Financial Close by the Financial Close Target Date (as such date may be extended by HMQ in its Sole Discretion upon the request of Project Co) other than as a result of:
- (i) the HMQ Conditions in Sections 2.5(a)(i)(A), (ii) and (iii) not being satisfied or waived as provided in Section 2.5;
  - (ii) the Project Co Conditions not being satisfied or waived as provided in Section 2.6; or
  - (iii) circumstances beyond the reasonable control of Project Co, but not including either:
    - (A) lack of funds; or
    - (B) subject to Section 2.4(b), the failure to complete the Financing,

HMQ will be entitled at any time thereafter to terminate this Project Agreement and to draw from the Standby Letter of Credit and to retain the lesser of (A) the full amount of the Standby Letter of Credit, and (B) the difference between the Guaranteed Price and the price that HMQ is able to obtain from another design-builder for the Works, together with all costs reasonably incurred by HMQ to enter into binding agreements with such other design-builder. The Parties agree that the amounts so drawn constitute liquidated damages and not a penalty. Such liquidated damages represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of Project Co not achieving Financial Close. For greater certainty, HMQ will promptly return the Standby Letter of Credit to Project Co if Financial Close is not achieved on or before the Financial Close Target Date (as such date may be extended by HMQ in its Sole Discretion upon the request of Project Co) as a result of circumstances other than those which entitle HMQ to draw on the Standby Letter of Credit in accordance with the provisions of this Section 2.4(a).

- (b) The Parties acknowledge that arrangements with respect to the Financing may be expressly conditional on the Lenders being satisfied with new information or new reports that arise or are prepared after the Submission Deadline but before Financial Close relating to the Works, including environmental or technical matters (the “**Lenders Condition**”), but for greater certainty, the Lenders Condition shall not include satisfaction with the forms of Implementing Agreements attached to this Project Agreement and such other conditions as are customary in securing the financing for projects similar to the Project. Project Co shall use diligent efforts to cause the Lenders Condition to be satisfied and shall keep HMQ advised of the status of such efforts. Upon request, and in any event at least 15 days prior to the Financial Close Target Date, Project Co shall provide a written report to HMQ detailing the status of the progress in satisfying the Lenders Condition. If Project Co or the Lenders notify HMQ that the Lenders

Condition will not be satisfied or waived and that as a direct result thereof, the Financing will not be completed, either HMQ or Project Co may terminate this Project Agreement and HMQ shall promptly return the Standby Letter of Credit to Project Co. If HMQ believes, on reasonable grounds, that the Lenders Condition will not be satisfied or waived and that as a result thereof the Financing will not be completed, HMQ may terminate this Project Agreement, whereupon HMQ will promptly return the Standby Letter of Credit to Project Co. For the purposes of the foregoing and for greater certainty, the Lenders Condition shall be deemed satisfied on the date which is fifteen (15) days prior to the Financial Close Target Date, unless the Lenders and Project Co can demonstrate to the reasonable satisfaction of HMQ, that in satisfying the Lenders Condition, they have revealed facts or circumstances not previously known to Project Co and/or the Lenders which would or are reasonably likely to promptly result in a material increase in the Cost of the Financing.

## **2.5 HMQ Conditions**

- (a) The execution and delivery of the documents referred to in Section 2 of Schedule 2 - Completion Documents, by HMQ on the Financial Close Target Date is conditional upon the following:
- (i) (A) HMQ is satisfied, acting reasonably, with the forms of any Implementing Agreements, other than those attached as Schedules to this Project Agreement; and
  - (B) HMQ is satisfied, acting reasonably, with any changes to the attached forms of Implementing Agreements and with the forms of any other Implementing Agreements and the Implementing Agreements and the documents referred to in Section 1 of Schedule 2 – Completion Documents, have been executed and delivered to HMQ by Project Co, Construction Contractor and the Lenders, as applicable;
  - (ii) HMQ is satisfied that all conditions and requirements of any Governmental Authority required to allow construction of the Project to proceed (other than those a Project Co Party is required to obtain under this Project Agreement) have been, or in HMQ's reasonable determination, can be, obtained without any material delay to the initiation and progress of construction of the Project by Project Co;
  - (iii) HMQ has received final approval from the MOI to proceed with the Project and to enter into the form of Implementing Agreements in form and substance satisfactory to HMQ, in its Sole Discretion;
  - (iv) HMQ has been given a reasonable opportunity, and in any event, not less than a period of 5 Business Days prior to the Financial Close Target Date, to review the Lending Agreements, and is satisfied, acting reasonably, that:

- (A) it has been given a reasonable opportunity to review the Lending Agreements; and
- (B) the Lending Agreements substantially implement the Financing Plan and are consistent with the Financial Model; and
- (v) HMQ has received an opinion, in the form attached as Appendix C to Schedule 2 – Completion Documents, from counsel to each of Project Co, Construction Contractor and Construction Guarantor, as applicable, respecting Project Co's, Construction Contractor's and Construction Guarantor's capacity and proper authorization to enter into, and the execution, delivery and enforceability of Project Co's, Construction Contractor's and Construction Guarantor's obligations under, the Project Agreement and each of the Implementing Agreements to which they are a party,

(collectively, the “**HMQ Conditions**”).

The HMQ Conditions are for the sole benefit of HMQ and may be waived in whole or in part by HMQ by written notice to Project Co on or before the Financial Close Target Date.

- (b) Subject to Section 2.4(a), if the HMQ Conditions have not been satisfied or waived on or before the Financial Close Target Date, then HMQ may terminate this Project Agreement and promptly return the Standby Letter of Credit to Project Co and, subject to the provisions of this Section 2.5(b), neither HMQ nor Project Co shall be liable to the other for any other damages, costs or losses resulting from the termination of this Project Agreement or for any expenses or costs incurred prior to or after the date of termination of this Project Agreement of any nature whatsoever or howsoever incurred, or related, directly or indirectly, to the Request for Proposals. Notwithstanding the foregoing, if HMQ terminates this Project Agreement as a result of the conditions in Sections 2.5(a)(ii) or 2.5(a)(iii) not being satisfied or waived on or before the Financial Close Target Date, then Project Co shall be entitled to receive an amount equal to all Direct Losses suffered, sustained or incurred by Project Co only during and relating to the period from and after the date of execution of this Project Agreement to the date of termination of this Project Agreement up to a maximum amount of \$[REDACTED]. In the event of the termination of this Project Agreement in accordance with the preceding sentence, Project Co shall give to HMQ an invoice for such Direct Losses and sufficient supporting evidence reasonably satisfactory to HMQ justifying the amount of the Direct Losses. Subject to any Dispute regarding the invoice, HMQ shall pay the amount of such Direct Losses to Project Co within a reasonable period of time following receipt of Project Co's invoice therefor, together with a full and final release of all claims of Project Co or any Project Co Party against HMQ and its directors, officers, employees, agents and representatives, in form and substance satisfactory to HMQ, acting reasonably. In the event of any Dispute over the calculation of such Direct Losses, any undisputed amount shall be paid in accordance with this Section 2.5(b) and the disputed amount shall be dealt with in accordance with the provisions of Schedule 27 – Dispute Resolution Procedure.

## **2.6 Project Co Conditions**

- (a) The execution and delivery of the documents referred to in Section 1 of Schedule 2 – Completion Documents, by Project Co on the Financial Close Target Date is conditional upon the following:
- (i) (A) each of Project Co, acting reasonably, and Lender, are satisfied with the forms of any Implementing Agreements, other than those attached as Schedules to this Project Agreement; and
  - (B) the Implementing Agreements and the documents referred to in Section 2 of Schedule 2 – Completion Documents, have been executed and delivered by HMQ to Project Co, Construction Contractor and the Lenders as applicable; and
  - (ii) [Intentionally Deleted];
  - (iii) the Lenders Condition has been satisfied or waived by the Lenders; and
  - (iv) Project Co is satisfied, acting reasonably, that all conditions and requirements of any Governmental Authority required to allow construction of the Project to proceed, including all building permits (other than those a Project Co Party is required to obtain under the provisions of this Project Agreement), have been or, in Project Co’s reasonable determination, can be obtained without any material delay to the initiation of and the progress of construction of the Project by Project Co;

(collectively, the “**Project Co Conditions**”).

The Project Co Conditions are for the sole benefit of Project Co and may be waived in whole or in part by Project Co by written notice to HMQ on or before the Financial Close Target Date.

- (b) Subject to Section 2.4(a), if the Project Co Conditions have not been satisfied or waived on or before the Financial Close Target Date, then Project Co may terminate this Project Agreement and HMQ shall promptly return the Standby Letter of Credit to Project Co and, subject to Section 2.5(b), neither HMQ nor Project Co shall be liable to the other for any damages, costs or losses resulting from the termination of this Project Agreement or for any expenses or costs incurred prior to or after the date of termination of this Project Agreement whatsoever or howsoever incurred, or related, directly or indirectly, to the Request for Proposals.

## **2.7 Disruption in Financial Markets**

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

- extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, HMQ may, in its sole discretion, either:
- (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
  - (ii) direct Project Co to assign to HMQ and HMQ will assume:
    - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
    - (B) those contracts between Project Co and any Project Co Party which HMQ elects to be assigned.
- (c) If HMQ exercises its rights pursuant to Section 2.7(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii) (A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus **[REDACTED]**% of such fee. HMQ's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to HMQ, that such fee represents full and final satisfaction of any obligation or liability of HMQ and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

### **3. GUARANTEED PRICE**

#### **3.1 Guaranteed Price and Adjustments**

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is \$128,592,443.81, 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 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);
  - (ii) acknowledge that the Cost of the Works is subject to adjustment, where provided for, under any future post-award Addenda issued to Project Co; and
  - (iii) 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 of Financial Close.
- (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. The Parties further agree that the Guaranteed Price will only be adjusted where the Contract Documents specifically and expressly refer 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 Contract Documents will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation under Schedule 22 – Variation Procedure.

### **3.2 Cash Allowances**

- (a) Project Co shall deposit the Cash Allowance Amount into the Cash Allowance Account on the dates (or such earlier dates as agreed) and in the amounts set out in the Financial Model at Financial Close and shall manage the Cash Allowance Account in accordance with this Section 3.2.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
- (i) Project Co will deposit the Cash Allowance Amount into the Cash Allowance Account on the dates (or such earlier dates as agreed) and in the amounts set out in the Financial Model at Financial Close;
  - (ii) Project Co will hold and manage all monies in the Cash Allowance Account and shall ensure that such monies earn a rate of interest that is no less than the rate of interest that is quoted or published by Schedule I Banks in Canada as payable on interest bearing Canadian dollar demand deposit accounts;
  - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
  - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to HMQ on a monthly basis;

- (v) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 3.2(b)(i), HMQ shall make deposits into the Cash Allowance Account in the event that the payment requirements, including applicable HST, for invoices approved by HMQ for Cash Allowance Items exceed the then balance of the Cash Allowance Account prior to approving any such invoices;
  - (vi) if, on the earlier of (i) Final Completion and (ii) the Termination Date, there exists a positive balance in the Cash Allowance Account, such balance will be paid by Project Co to HMQ or as HMQ directs;
  - (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation; and
  - (viii) Within the Cash Allowance Account, the Cash Allowance Amount shall be allocated to certain Cash Allowance Items such that no more than:
    - (A) \$[REDACTED] shall be committed to or spent on Cash Allowance Items in respect of Category 1 – Items;
    - (B) \$[REDACTED] shall be committed to or spent on Cash Allowance Items in respect of Category 2 – Items.
- (c) Project Co shall provide monthly reports to the HMQ Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
  - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items as well as the itemized and aggregate amounts spent in the immediately preceding month for all Cash Allowance Items (itemized separately from amounts spent to date): (a) by way of payment directly from the Cash Allowance Account to Project Co, a Project Co Party or other vendor in respect of any and all Cash Allowance Items; (b) by way of payment directly from Project Co, a Project Co Party or any other Person (other than from the Cash Allowance Account) in respect of any and all Cash Allowance Items; and (c) by way of payment from the Cash Allowance Account to Project Co (or as Project Co may otherwise direct) in respect of payments contemplated in Section 3.2(i); and
  - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly report described in Section 3.2, Project Co shall, on a monthly basis, provide to the HMQ Representative a request for payment approval (each, a **“Request for Payment Approval”**) that includes the following information:
- (i) details of all vendor or Project Co Party invoices related to Cash Allowance Items that are due for payment that month, including relevant supporting



- documentation, which shall include copies of all vendor and Project Co Party invoices;
- (ii) evidence that the commitment by Project Co to purchase the Cash Allowance Items has been approved by HMQ; and
  - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.
- (e) HMQ shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. HMQ shall only be permitted to withhold its approval if HMQ determines that the Request for Payment Approval does not contain the information that HMQ requires, acting reasonably, to discharge its obligations under this Section 3.2. If HMQ withholds its approval pursuant to this Section 3.2(e) and subsequently receives the information that HMQ requires, acting reasonably, to discharge its obligations under this Section 3.2, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, HMQ's approval for the invoices set out in the aforementioned Request for Payment Approval.
- (f) If HMQ approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or Project Co Parties in accordance with this Section 3.2. To the extent the invoices and/or payments approved by HMQ in accordance with this Section 3.2 in respect of Cash Allowance Items are in excess of the then current balance in the Cash Allowance Account HMQ shall, in accordance with, and subject to, Section 3.2(b)(v), pay such excess amount to the relevant vendors or Project Co Party that has provided the relevant Cash Allowance Item.
- (g) Project Co acknowledges and agrees that:
- (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
  - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Project Co Party in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
  - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
  - (iv) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

- (h) notwithstanding the provisions of this Section 3.2, where HMQ has approved a Request for Payment Approval, and (i) the amount in the Cash Allowance Account is not sufficient to make the payments approved or requested, and (ii) the then balance in the Cash Allowance Account is a positive amount, Project Co shall fund the difference between the amount in the Cash Allowance Account at such time and the outstanding amount of such approved Request for Payment Approval to the maximum amount of the total Cash Allowance Amount (for clarity, determined on an aggregate basis across all Cash Allowance Items).
- (i) notwithstanding Section 3.2(b)(vi), where Project Co has made a payment in accordance with 3.2(h) or (j) (being, for clarity, a payment directly from Project Co, a Project Co Party or another Person, and not a payment made from the Cash Allowance Account), then Project Co shall be entitled to be reimbursed from the Cash Allowance Account such amounts from subsequent deposits made to the Cash Allowance Account, without interest. Project Co shall provide HMQ with such documentation as it considers necessary, acting reasonably, in respect of the withdrawal of such funds, and provide at least ten (10) Business Days' written notice to HMQ prior to the withdrawal of such funds from the Cash Allowance Account.
- (j) in the event that payments, including applicable HST, for invoices and/or payments in respect of any Cash Allowance Item are required to be made to vendors and/or Project Co Parties, as the case may be, in advance of the date or dates set forth in the Financial Model at Financial Close for deposit by Project Co into the Cash Allowance Account, then, in each such case, and notwithstanding that there may be insufficient funds in the Cash Allowance Account at such time, Project Co, and not HMQ, shall make payments to vendors and/or Project Co Parties in respect of all Cash Allowance Items approved in writing by HMQ pursuant to this Section 3.2, (for clarity, such payments being made directly from Project Co, a Project Co Party or another Person, and not from the Cash Allowance Account) provided that Project Co shall not be required to make any payments in excess of the amount representing the total Cash Allowance Amount (for clarity, determined on an aggregate basis across all Cash Allowance Items).

## **4. PAYMENT**

### **4.1 General**

- (a) Subject to the provisions of the Contract Documents, Section 3.1(d), the provisions of Schedule 20 – Payments and Holdbacks, and in accordance with and subject to Applicable Law respecting holdbacks, HMQ shall make the payments set out in this Article 4.
- (b) For the purposes of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

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

- (a) Project Co acknowledges and agrees with HMQ that, subject to the provisions of Section 8.3 of the Lenders' Direct Agreement, HMQ is not responsible for the payment of any Base Progress Payments nor any Legislative Holdbacks in respect thereof, except to the extent deducted from any Substantial Completion Payment.

#### **4.3 Substantial Completion Payment**

- (a) Subject to Sections 4.4 and 4.9, HMQ covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST on the Substantial Completion Payment Date.

#### **4.4 Direction of Substantial Completion Payment**

- (a) Project Co hereby irrevocably directs HMQ to make any Substantial Completion Payment, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. HMQ shall pay the Substantial Completion Payment as directed by Project Co and shall not accept any redirection without the consent of the Lenders' Agent. HMQ 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 HMQ of the Substantial Completion Payment to the Lenders' Agent in accordance with this Section 4.4 constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.5 Payment of Substantial Completion Holdback and Balance of Guaranteed Price**

- (a) Subject to Section 4.9, HMQ covenants and agrees with Project Co to pay to Project Co the Substantial Completion Holdback on the Substantial Completion Holdback Payment Date and to pay to Project Co the unpaid balance of the Guaranteed Price on the date provided in Section 5.4 of Schedule 20 – Payments and Holdbacks, or as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. HMQ agrees to pay the Substantial Completion Holdback and the balance of the Guaranteed Price as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by HMQ of the Substantial Completion Holdback and the balance of the Guaranteed Price in accordance with this Section 4.5 as Project Co may direct, constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Substantial Completion Holdback and the balance of the Guaranteed Price to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.6 HMQ Holdback**

- (a) The HMQ Holdback may be reduced from time to time as a result of such actions by Project Co, as confirmed by the Independent Certifier, in accordance with the terms and conditions of this Project Agreement. To the extent the HMQ Holdback is reduced from time to time, Project Co hereby irrevocably directs HMQ to pay the amount of any HMQ Holdback reduction, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. HMQ agrees to pay the HMQ Holdback reductions as directed by Project Co and shall not accept any redirection without the consent of the Lenders' Agent. Project Co acknowledges and agrees that payment by HMQ of the HMQ Holdback reductions in accordance with this Section 4.6 as Project Co may direct constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the HMQ Holdback reductions to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.7 Additional HMQ Payments**

- (a) Unless otherwise provided in the relevant Variation Confirmation or Variation Directive or in this Project Agreement, HMQ will pay all Additional HMQ Payments to Project Co, together with applicable HST, on a progress payment basis in the manner and at the times contemplated by Schedule 20 – Payments and Holdbacks, or as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. HMQ agrees to pay the Additional HMQ Payments as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by HMQ of the Additional HMQ Payments in accordance with this Section 4.7 as Project Co may direct, constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Additional HMQ Payments to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.8 Certified Cost to Complete**

- (a) After HMQ has paid the Substantial Completion Payment, it shall thereafter continue to be responsible for payment to Project Co of the Certified Cost to Complete as at the Substantial Completion Payment Date on a progress payment basis in the manner and at the times contemplated in this Project Agreement. Project Co hereby irrevocably directs HMQ to make any payment of the Certified Cost to Complete to the Lenders' Agent, or as the Lenders' Agent may direct, as security for the Financing. HMQ shall pay the Certified Cost to Complete as directed by the Lenders' Agent and shall not accept any redirection without the consent of the Lenders' Agent. HMQ agrees to pay the Certified Cost to Complete as directed by Project Co. Project Co acknowledges and agrees that payment by HMQ of the Certified Cost to Complete in accordance with this Section 4.8 as Project Co may direct constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Certified Cost to Complete under the Project Agreement

and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.9 Compensation on Termination**

- (a) If this Project Agreement is terminated pursuant to Sections 34.3(a), 35.2(a)(ii), 36.2 or 36.3, then:
- (i) Schedule 23 - Compensation on Termination shall apply and HMQ shall pay Project Co any applicable compensation on termination.; and
  - (ii) the provisions of Sections 4.3 through 4.8, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs HMQ to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct, as security for the Financing. HMQ shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. HMQ will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. Project Co acknowledges and agrees that payment by HMQ of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.9 constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.10 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.

#### **4.11 Project Co to Conduct Subsearch**

- (a) In advance of any payment by HMQ under the Project Agreement, Project Co agrees to conduct or cause to be conducted a subsearch of the Site. If a Lien has been registered against the Site arising from the performance of the Works (save and except for any Liens in respect of work done by contractors directly engaged by HMQ for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.17(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), Project Co shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged or to make alternative arrangements to bond or otherwise secure the amount of the Lien and costs associated therewith satisfactory to HMQ, acting reasonably, and Project Co agrees that doing so shall be a condition precedent to the making of any such payment by HMQ under the Project Agreement.

#### **4.12 HST**

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

#### **4.13 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) HMQ to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 44) which are due to HMQ by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 12 – Performance Guarantee of Construction Guarantor; and
  - (ii) Project Co to set off against any amounts otherwise due to HMQ pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 44) which are due to Project Co by HMQ pursuant to the terms of this Project Agreement,

and are further limited with respect to the Debt Amount as described in Section 4.5 of Schedule 23 – Compensation on Termination.

#### **4.14 Effect of Payment**

- (a) Subject to Section 4.6 of Schedule 23 – Compensation on Termination 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.

#### **4.15 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.

#### **4.16 Taxes**

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST but inclusive of all other Taxes. Except as specified in Section 4.16(c), applicable HST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination.
- (b) HMQ shall pay, or cause to be paid, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or the ARL Spur Line and the ARL T1 Station.

- (c) Within 3 weeks of the end of the month in which Substantial Completion occurs, HMQ shall pay to Project Co all HST payable in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the construction of the Project for remittance to the Canada Revenue Agency, which amount will be set out in an invoice issued by Project Co to HMQ upon the occurrence of Substantial Completion and shall reflect the capital cost of the Project as set out in the Financial Model, which will serve as a reasonable estimate of the full consideration for Substantial Completion. For clarity, the amount of each payment made by HMQ to Project Co pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada) does not include any HST amounts already paid by HMQ to Project Co on the Substantial Completion Payment.
- (d) HMQ shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by HMQ upon and in connection with payments by HMQ to Project Co under this Project Agreement.

#### **4.17 Changes in Scope of HST**

- (a) If, as a result of a Change in Law, the provision of any goods or services by Project Co in connection with the performance of the Works that was not subject to HST as at the date of this Project Agreement becomes subject to HST, HMQ will pay to Project Co the amount of such HST as may be exigible from time to time thereafter in connection with the provision of such goods or services by Project Co.

#### **4.18 Changes in Recoverability of Tax Credits**

- (a) HMQ will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to HMQ from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 4.18, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Legislative Assembly of Ontario in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to HMQ which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the 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 4.18, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to HMQ which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the 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.

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

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

**4.20 Residency – Income Tax Act (Canada)**

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

**4.21 Taxes – General**

- (a) Project Co shall not, without the prior written consent of HMQ (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause HMQ to have (or result in HMQ 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 Contract Document.

**4.22 Taxes – Indemnity**

- (a) If (i) Project Co becomes a Non-Resident, or (ii) HMQ is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ under the Project Agreement or under any of the Contract Documents, then HMQ 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) HMQ is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by HMQ under this Project Agreement or under any



other Contract Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Project Co becomes a Non-Resident, or (ii) HMQ is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ under the Project Agreement or under any of the Contract Documents, Project Co shall, in each case, indemnify and hold harmless HMQ for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by HMQ in respect of any amounts paid or credited by HMQ to Project Co or any Project Co Party under this Project Agreement or under any other Contract Document as a result of either of the foregoing items less any amount withheld or deducted by HMQ in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date HMQ makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by HMQ shall be conclusive evidence, absent manifest error, of the amount due from Project Co to HMQ. HMQ shall be entitled to exercise its rights of set-off under Section 4.13 against any amounts owing under this indemnification.

## **5. SCOPE OF AGREEMENT**

### **5.1 Scope of Agreement**

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

## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to HMQ that as of the date of this Project Agreement:
- (i) Project Co is a corporation formed and validly existing under the laws of Ontario, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this

- Project Agreement and each of the Implementing Agreements to which it is a party, and to perform its obligations hereunder and thereunder;
- (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of light rail infrastructure and associated facilities and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
  - (iii) Project Co has the requisite power, authority and capacity to execute 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;
  - (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement or any of the Implementing Agreements to which it is a party;
  - (v) this Project Agreement and the Implementing Agreements (when executed and delivered) to which Project Co is a party have been duly authorized, executed, and delivered by Project Co and constitute a legal, valid, and binding obligations of Project Co, enforceable against Project Co 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;
  - (vi) the execution, delivery, and performance by Project Co of this Project Agreement and the Implementing Agreements to which it is a party 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) Applicable Law; or
    - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
  - (vii) no Project Co Event of Default has occurred and is continuing;

- (viii) all of the information regarding Project Co set out in Schedule 31 - Project Co Information is true and correct in all material respects;
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (x) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of HMQ, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xi) Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (xiii) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xiv) Project Co is not a Non-Resident;
- (xv) Project Co has obtained, or will obtain, all necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Works;
- (xvi) the manager or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xvii) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to HMQ's approval, in the event of death, incapacity or resignation;
- (xviii) Project Co and certain of the Project Co Parties have conducted inspections of the Site during the Request for Proposals process and an investigation and examination of the Contract Documents, and any other documents made available to Project Co by HMQ (which include, to the extent made available to Project Co by HMQ, equipment lists, a legal description of the Site, copies of any registered

and unregistered agreements affecting the Site, results of tests, reports of independent testing agencies and surveys and documents indicating the location of Utilities and other structures to the extent obtained by HMQ) so as to ascertain the nature or location of the Works and the Site, the physical conditions of the Site, the interface with the Existing Facilities and protocols, rules and regulations if any, 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;

- (xix) Project Co has sufficient expertise available to it with the appropriate skills to review the Contract Documents in accordance with the standard of care set out in Section 11.11(a)(viii); and
- (xx) Project Co has secured the Financing and is in a position to implement 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.

## **6.2 HMQ Representations and Warranties**

- (a) IO represents and warrants to Project Co that as of the date of this Project Agreement:
  - (i) IO is a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c.9, Schedule 32*, 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 any of the Implementing Agreements to which IO is a party as agent for the Province;
  - (ii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), as applicable, IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for the Province that are required by this Project Agreement to be executed and delivered by IO;
  - (iii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), IO has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
  - (iv) subject to Sections 6.2(a)(v)(D) and (E), IO has obtained all necessary approvals to enter into and perform its obligations under this Project Agreement;

- (v) this Project Agreement has been duly authorized, executed, and delivered by IO and constitutes a legal, valid, and binding obligation of IO, enforceable against IO in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
  - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
  - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
  - (D) Section 11.3 of the *Financial Administration Act* (Ontario);
  - (E) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act* (Ontario); and
  - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act* (Ontario);
- (vi) the execution, delivery, and performance by IO of this Project Agreement and the Implementing Agreements to which it is a party does not and will not violate or conflict with, or constitute a default under:
  - (A) the *Ministry of Infrastructure Act*;
  - (B) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, or any regulations made in respect thereof;
  - (C) the *Executive Council Act* (Ontario);
  - (D) any Applicable Law; or
  - (E) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no HMQ Event of Default has occurred and is continuing; and
- (viii) to the knowledge of IO, there are no actions, suits, proceedings, or investigations pending, or threatened (in writing) against IO at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of

which IO has received written notice and that individually or in the aggregate could result in a material adverse effect on the Project.

- (b) Metrolinx represents and warrants to Project Co that as of the date of this Project Agreement:
- (i) Metrolinx is a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, and has all 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 any of the Implementing Agreements to which Metrolinx is a party as agent for the Province;
  - (ii) subject to Sections 6.2(b)(v)(C), (D), (E) and (F), as applicable, Metrolinx 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 Metrolinx's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by Metrolinx as agent for the Province that are required by this Project Agreement to be executed and delivered by Metrolinx;
  - (iii) subject to Sections 6.2(b)(v)(C), (D), (E) and (F), Metrolinx has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
  - (iv) subject to Sections 6.2(b)(v)(D) and (E), Metrolinx has obtained all necessary approvals to enter into and perform its obligations under this Project Agreement;
  - (v) this Project Agreement has been duly authorized, executed, and delivered by Metrolinx and constitutes a legal, valid, and binding obligation of Metrolinx, enforceable against Metrolinx in accordance with its terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
    - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
    - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;

- (D) Section 11.3 of the *Financial Administration Act* (Ontario);
  - (E) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act* (Ontario); and
  - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act* (Ontario);
- (vi) the execution, delivery, and performance by Metrolinx of this Project Agreement and the Implementing Agreements to which it is a party does not and will not violate or conflict with, or constitute a default under:
- (A) the *Metrolinx Act, 2006*, S.O. 2006, c.16, or any regulations made in respect thereof;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no HMQ Event of Default has occurred and is continuing;
- (viii) to the knowledge of Metrolinx, there are no actions, suits, proceedings, or investigations pending, or threatened (in writing) against Metrolinx at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which Metrolinx has received written notice and that individually or in the aggregate could result in a material adverse effect on the Project; and
- (ix) Metrolinx has rights of use and access to, on and over the Site and the ARL Spur Line and ARL T1 Station or has the requisite power to obtain such rights that are sufficient to enable HMQ to grant or cause to be granted to Project Co the rights contemplated in Section 16.1.

## **7. BACKGROUND INFORMATION**

### **7.1 No Liability**

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3, HMQ, any HMQ Party, the GTAA or any Government Entity shall not be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from HMQ, any HMQ Party, the GTAA or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

## **7.2 No Warranty**

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3:
- (i) neither HMQ, the GTAA nor any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither HMQ, the GTAA nor any 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 Contract Documents; and
  - (ii) neither HMQ, the GTAA nor any Government Entity shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
    - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
    - (B) to review or update the Background Information; or
    - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

## **7.3 No Claims**

- (a) Project Co acknowledges and confirms that:
- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
  - (ii) except as expressly provided in Sections 7.4, 18.2 and 18.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against HMQ, any HMQ Party, the GTAA or any Government Entity (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
    - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
    - (B) that the Background Information was incorrect or insufficient,



nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such ground.

#### **7.4 Technical Reports**

- (a) HMQ agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by HMQ or any HMQ Party or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of HMQ, incorrect or there is relevant information in the possession or control of HMQ that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Works or materially adversely affects Project Co's cost of performing the Works, such incorrect information shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (b) For the purposes of Section 7.4(a), "to the actual knowledge of HMQ" means to the actual knowledge of the president and chief executive officer, or the project manager of IO.

### **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.

#### **8.2 Implementing Agreements**

- (a) Project Co shall not:
  - (i) terminate or agree to the termination of all or part of any Implementing Agreement, except pursuant to Sections 47.3 and 48.2 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 or waive or exercise any of its rights under any Implementing Agreement that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of HMQ, whether actual or potential;
  - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Implementing Agreement, that materially adversely affect Project

Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of HMQ, whether actual or potential; or

- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Implementing Agreement, except in the circumstances referenced in Section 8.2(a)(i),

without the prior written consent of HMQ, not to be unreasonably withheld or delayed, 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 HMQ, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Implementing Agreement as described in Section 8.2(a)(i), or any agreement replacing all or part of any Implementing Agreement 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 47.3.

- (b) Upon the written request of HMQ or the HMQ Representative, Project Co will deliver or cause to be delivered to HMQ or the HMQ Representative a copy of any notices delivered or received by Project Co under any of the Implementing Agreements.

### **8.3 Changes to Lending Agreements**

- (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.

### **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. TRANSFER OF GTAA OBLIGATIONS TO PROJECT CO**

### **9.1 Transfer of Obligations**

- (a) HMQ hereby transfers to Project Co and Project Co hereby assumes those obligations of HMQ to the GTAA in respect of the design and construction of the Project as more particularly described in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.

- (b) Where in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co any matter is stated to be required to be notified to or submitted to the GTAA or any other third party, or is stated to be subject to the consent or approval of the GTAA or any other third party (or any equivalent procedure), then, to the extent such matter relates to the performance of the design and construction of the Project, Project Co shall not proceed with such matter until the relevant notification, submission, consent or approval has been given or is deemed to have been given or Project Co is otherwise entitled to proceed in accordance with Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co. Any proposed document (including any Design Data) or proposed course of action on the part of Project Co and in respect of the design and construction of the Project, which under the terms of Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co is required to be submitted to the GTAA will be submitted in the name of and performed by Project Co as agent for HMQ.
- (c) Where under Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co or this Project Agreement, Project Co is required to consult with, or obtain the consent or agreement of HMQ, Project Co shall in respect of such consultation or request for consent or agreement, act in a timely manner and so as to ensure that HMQ has a reasonable time in which to consider the outcome of the consultation or the request for consent or agreement and to respond before any relevant deadline in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co or this Project Agreement.
- (d) To the extent that any notice, information, consent, claim, request, response, submission or other communication (a "**Communication**") is required or permitted to be given or made by Project Co to the GTAA or any other third party under Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co or this Project Agreement, Project Co shall provide such communication not less than 5 Business Days prior to the time by which the Communication is required to be submitted pursuant to the terms of Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.

## **10. HMQ RESPONSIBILITIES**

### **10.1 General**

- (a) HMQ shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) obtain, maintain, and, as applicable, renew the HMQ Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and

- (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that HMQ shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) HMQ shall, and shall cause all HMQ 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 HMQ or any Government Entity in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude HMQ 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 HMQ from time to time, subject to Section 29.1(b).

## **11. PROJECT CO RESPONSIBILITIES AND DESIGN AND CONSTRUCTION OBLIGATIONS**

### **11.1 Other Business**

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

### **11.2 [Intentionally Deleted]**

### **11.3 Complete ARL Spur Line and ARL T1 Station**

- (a) Project Co shall design, engineer, construct and commission the ARL Spur Line and ARL T1 Station so as to provide HMQ a complete ARL Spur Line and ARL T1 Station 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.

### **11.4 Development of Design**

- (a) Project Co shall, at its own cost, develop and complete the design of the ARL Spur Line and ARL T1 Station and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 11.4.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) The Parties agree that Appendix A to Schedule 10 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the HMQ Representative) for each of the following:

- (i) staged 50% and 100% design development documentation, being design development drawings, reports, schedules and Output Specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
  - (ii) 50% and 100% construction drawing documentation, being construction drawings, reports, schedules and Output Specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
  - (iii) Permit, Licence, Approval and Agreement drawings (phased, if applicable); and
  - (iv) all other documentation required pursuant to Schedule 10 - Review Procedure.
- (d) Project Co shall submit to the HMQ Representative for review in accordance with Schedule 10 - Review Procedure all Design Data and other items listed in Section 11.4(c).
- (e) The Design Data and other items listed in Section 11.4(c) must contain, at a minimum, the following additional information:
- (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all design or construction drawings and Output Specifications necessary to enable the HMQ Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 - Review Procedure;
  - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
  - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (f) All design review meetings held by Project Co which HMQ wishes to attend shall be held in Toronto, Ontario unless HMQ otherwise agrees in writing.
- (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the ARL Spur Line and ARL T1 Station prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 - Review Procedure or Schedule 27 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and

risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

- (h) Subject to Section 11.7, neither HMQ nor any HMQ Party will have any liability:
  - (i) if a document submitted by Project Co and reviewed by HMQ or the HMQ Representative results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
  - (ii) for any loss or claim arising due to some defect in any documents, drawings, Output Specifications or certificates submitted by Project Co.
- (i) Project Co and HMQ will cooperate with each other in the design review process. Notwithstanding such cooperation by HMQ, such review shall not, except as provided in Section 11.7, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (j) Project Co shall allow the HMQ Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the HMQ Representative as soon as practicable following receipt of a written request from the HMQ Representative.
- (k) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and the HMQ Representative may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

### **11.5 Start-Up Meeting**

- (a) Within 10 Business Days of Financial Close, Project Co and the Design Team shall attend a start up meeting (the “**Start-Up Meeting**”) with HMQ to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
  - (i) Project Co’s plan to develop a successful long-term partnership with HMQ for the purpose of supporting HMQ in achieving its vision, mission and core values;
  - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
  - (iii) Project Co’s process to ensure optimum design quality;
  - (iv) Project Co’s approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment;
  - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works

Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative, taking into account both the resources available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;

- (vi) Project Co's approach to timing, construction, adjustment and user feedback on required mock-ups; and
- (vii) 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.

### **11.6 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 user group 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 HMQ Representative;
  - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and shall incorporate such schedule into the Works Schedule;
  - (iii) Project Co shall circulate to the HMQ Representative an agenda for each of the Design Review Meetings no later than 10 Business Days prior to the relevant Design Review Meeting;
  - (iv) the Design Review Meetings shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
  - (v) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within two Business Days after each Design Review Meeting, Project Co shall provide to the HMQ 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;
  - (vi) HMQ and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that HMQ shall not be bound by the input provided in connection with the Design Review Meetings;

- (vii) Project Co shall submit to HMQ the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure; and
  - (viii) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure.
- (b) The Parties shall, together with the HMQ Design Team, hold Design Review Meetings prior to:
- (i) each of the Design Development Submittals; and
  - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of HMQ input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

#### **11.7 [Intentionally Deleted]**

#### **11.8 Works Submittals**

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

#### **11.9 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.



### **11.10 General Responsibilities, Standards and Contract Time**

- (a) Project Co shall perform and complete the Works:
  - (i) so as to satisfy the Output Specifications;
  - (ii) in accordance with the Project Co Proposal Extracts;
  - (iii) in accordance with the Design Data;
  - (iv) in accordance with the Works Schedule and in this regard, shall commence the Works by December 16, 2011 and, subject to adjustment to the Contract Time, as provided for in the Contract Documents; (A) achieve Substantial Completion by the Scheduled Substantial Completion Date; (B) achieve Final Completion by the Scheduled Final Completion Date;
  - (v) in compliance with Applicable Law, including giving all required notices;
  - (vi) 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;
  - (vii) in accordance with Good Industry Practice;
  - (viii) in a timely and professional manner;
  - (ix) with due regard to the health and safety of persons and property;
  - (x) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of and which will enable HMQ and the HMQ Parties to comply with Applicable Law; and
  - (xi) so as to satisfy and in strict accordance with all other terms of this Project Agreement and the other Contract Documents.
- (b) Project Co shall furnish necessary certificates as evidence that the Works installed conform with Applicable Law, including all certificates necessary for the HMQ Representative to certify as required to obtain a permit for HMQ's occupancy or partial occupancy. These certificates are to be final certificates giving complete clearance for the portions of the Works for which they are obtained.

### **11.11 General Construction Obligations**

- (a) Without limiting Section 11.10, Project Co shall:
  - (i) have complete control of the Works and shall effectively direct and supervise the Works so as to ensure conformance with the Contract Documents, including the phasing or sequencing requirements for the Works set out in the Contract

Documents. During the progress of the Works, Project Co shall endeavour to submit any request for information to the HMQ Representative in a timely manner having regard to the Works Schedule, including whether and how the information requested affects the critical path. Project Co shall develop and implement protocols in accordance with the Output Specifications for the phasing or sequencing of the Works as set out in the Contract Documents, including the coordination of the work of HMQ's own forces or other contractors with the Works. Without limiting the generality of the foregoing, Project Co is responsible for the intermeshing of the various parts and systems comprising any portions of the Works so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the Project Co Parties or between any of them and Project Co as to where the Works of one begins and ends in relation to the Works of the other;

- (ii) be solely responsible for all construction means, methods, techniques, sequences and procedures used to undertake the Works and for coordinating the various parts of the Works under this Project Agreement and shall coordinate the Works so as to not interfere, interrupt, obstruct, delay or otherwise affect the work of others;
- (iii) prior to commencing applicable procurement and construction activities, verify, at the Site, all measurements and levels necessary for proper and complete fabrication, assembly and installation of the relevant work, and shall further carefully compare such field measurements and conditions with the requirements of the Contract Documents. Where dimensions are not included or exact locations are not apparent, Project Co shall immediately notify the HMQ Representative in writing and obtain written instructions from the HMQ Representative before proceeding with any part of the Works affected thereby;
- (iv) ensure that no work other than the Works under this Project Agreement is constructed on the Site by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
- (v) protect the Works from all of the elements, casualty and damage in accordance with and subject to the Contract Documents;
- (vi) in respect of plant, equipment, Products and materials incorporated in the Works, use plant, equipment, Products and materials that:
  - (A) are of a kind that are consistent with the Contract Documents;
  - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law, the Contract Documents and Good Industry Practice; and
  - (C) where they differ from the Contract Documents, have been substituted with HMQ's prior written consent;

- (vii) provide all the labour, Products, tools, construction machinery, equipment, water, heat, light, power, transportation and other facilities and services required for the performance and completion of the Works and carry out, perform, observe, fulfil and abide by all the covenants, agreements, stipulations, provisions and conditions mentioned and contained in the Contract Documents on the part of Project Co to be carried out, performed, observed and fulfilled;
- (viii) exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent design-builder supplying similar services for similar projects, in a timely, good and workmanlike manner, it being acknowledged by Project Co that throughout this Project Agreement, Project Co's obligations, duties and responsibilities shall be interpreted in accordance with this standard and any default or alleged default by Project Co in the performance of its obligations, duties and responsibilities shall similarly be interpreted in accordance with this standard;
- (ix) exercise the same standard of due care and diligence as set out in paragraph 11.11(a)(viii) in respect of any Products, personnel, or procedures which it may recommend to HMQ;
- (x) comply with all requirements of HMQ set forth in the Contract Documents;
- (xi) comply with all rules and directives issued by HMQ regarding the continued operations of the Existing Facilities so as not to disrupt the operations of the GTAA or HMQ, and except for any requirements of HMQ described in Section 11.11(a)(x), the cost, if any, and the additional time, if any, required to comply with any such rules and directives issued by HMQ shall be adjusted and compensated for by way of a Variation or Variation Directive, as applicable as provided in Schedule 22 – Variation Procedure; and
- (xii) use such project management software system(s) and/or online collaboration system(s) (including software and system(s) for project management, change management, request for information control, document management and other communications) as directed by the HMQ at its Sole Discretion from time to time. Project Co shall be responsible for its costs and expenses with respect to the implementation and use of such system(s).

#### **11.12 Liability Unaffected**

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

the HMQ 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.

**11.13 Achievement of Substantial Completion and Final Completion in accordance with Prescribed Dates**

- (a) It is agreed that one of the reasons Project Co was selected to perform the Works is Project Co's covenant that it will achieve Substantial Completion and Final Completion by the dates set out in Section 11.10(a)(iv) of this Project Agreement, and Project Co acknowledges that it is critical to HMQ that Substantial Completion and Final Completion be achieved by the prescribed dates set out in Section 11.10(a)(iv), and that time is of the essence of this Agreement.

**11.14 Permits, Licences, Approvals and Agreements**

- (a) Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
  - (ii) except those obligations which are identified as HMQ obligations as identified in Appendix 1 of Schedule 1 - Definitions and Interpretation, assume all of the obligations of HMQ under the HMQ Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals); and
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on HMQ or any HMQ Party, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the prior written consent of HMQ not to be unreasonably withheld or delayed, provided that neither HMQ nor any HMQ Party shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval and Agreement or for the failure of Project Co to renew any HMQ Permit, Licence, Approval and Agreement. HMQ shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on HMQ or any HMQ Party by the requirements of any Permit, Licence, Approval and Agreement obtained with HMQ consent under this Section 11.14(b).
- (c) HMQ shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 11.14(a)(ii), HMQ shall: (i) provide Project Co with relevant information and copies of notices received under the applicable HMQ Permits, Licences, Approvals and Agreements and (ii) execute any documents under the

applicable HMQ Permits, Licences, Approvals and Agreements which Applicable Law dictates that only HMQ can execute.

### **11.15 Safety**

- (a) From Financial Close until the Substantial Completion Date, Project Co shall:
- (i) keep the Site and the Works 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; and
  - (ii) 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.
- (b) Project Co shall perform all of the obligations of the ‘constructor’, within the meaning of the *Occupational Health and Safety Act* (Ontario), and shall be solely responsible for construction safety at the Site and for compliance with the rules, regulations and practices required by the *Occupational Health and Safety Act* (Ontario). Without limiting Project Co’s obligations pursuant to this paragraph, Project Co shall ensure that the Works of all Project Co Parties is in accordance with the *Occupational Health and Safety Act* (Ontario).
- (c) Prior to commencement of the Works, Project Co shall submit to HMQ:
- (i) documentation of a valid WSIB clearance certificate and confirmation of Project Co’s or Construction Contractor’s WSIB CAD-7 performance rating;
  - (ii) documentation of Project Co’s insurance coverage;
  - (iii) documentation of Project Co’s in-house safety-related programs; and
  - (iv) a copy of the Notice of Project filed with the Ministry of Labour (Ontario).
- (d) Project Co shall ensure that the ARL Spur Line and ARL T1 Station comply with all relevant railway safety standards including:
- (i) The *Federal Railway Safety Act*;
  - (ii) Any relevant Applicable Law; and
  - (iii) North American passenger rail good industry safety practices.
- (e) Project Co hereby represents and warrants to HMQ that appropriate health and safety instruction and training have been provided to the Project Co Parties (to the extent same have access to the Site), before the Works of such Project Co Party is commenced and agrees to provide to HMQ, if requested, proof of such instruction and training.

- (f) Project Co shall tour the appropriate area to familiarize itself with the Site prior to commencement of the Works.
- (g) Project Co shall perform the Works in accordance with its corporate safety-related programs and Applicable Law. Project Co shall have a competent supervisor on site as required under the *Occupational Health and Safety Act* (Ontario) at all times.
- (h) Prior to commencing the Works and prior to receiving payment on each of Substantial Completion, Final Completion and the final certificate for payment, and for each application for payment, Project Co shall provide a clearance certificate, obtained by the applicable Project Co Parties from the WSIB, indicating compliance with workers' compensation legislation, including payments due thereunder. At any time during the term of this Project Agreement, when requested by HMQ, Project Co shall provide such evidence of compliance by Project Co and/or the applicable Project Co Parties.

#### **11.16 Minimize Disturbance and Work in Existing Facilities**

- (a) Project Co recognizes and understands that the ARL Spur Line and ARL T1 Station intersect with other public infrastructure operations which are subject to a highly regulated legal and operational environment. Project Co acknowledges that in addition to the use of Good Industry Practice, the Contract Documents include instructions as to the manner in which the Works are to be performed in order to minimize disturbance to the Existing Facilities, including with respect to noise, dust control, access to the Site and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Facilities and in respect of those portions of the Works where connections are being made to the Existing Facilities. In addition, Project Co acknowledges that it has familiarized itself with the facility and/or building operations of the Existing Facilities and will perform the Works taking into account the requirements of HMQ to maintain normal operations of the Existing Facilities. Project Co further acknowledges that the Cost of the Works includes all premium time and overtime that may be required to perform the Works in accordance with the Contract Documents and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Output Specifications.
- (b) Project Co recognizes that part of the Works consists of the renovation of existing buildings and structures or the addition of a structure to an existing building and acknowledges that it has reviewed the Contract Documents. Project Co shall use all methods required to comply with the instructions set out in the Contract Documents, during the performance of the Works. Project Co shall fully cooperate with HMQ in complying with said instructions during the performance of the Works. Any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price.

#### **11.17 Subcontractors and Suppliers**

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

- (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Contract Documents;
  - (ii) incorporate the relevant terms and conditions of the Contract Documents into all contracts or written agreements with Project Co Parties, including those specified in Section 11.29; and
  - (iii) be as fully responsible to HMQ for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached as Schedule 8 is a list of all Project Co Parties which Project Co has engaged or caused to be engaged for the performance of the Works as of the date of execution of this Project Agreement. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior notice to (but without the approval of) the HMQ Representative, provided however, that if the HMQ Representative reasonably objects to any change to a mechanical or electrical Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement mechanical or electrical Subcontractor to which the HMQ Representative does not reasonably object.
- (c) Project Co shall not be required to employ as a Project Co Party, a person to whom Project Co may reasonably object, provided HMQ may require Project Co to use particular persons as specified in the Contract Documents for specific building systems of HMQ to ensure HMQ does not lose the benefit of any warranty in respect to such building systems. Notwithstanding the foregoing provisions of this Section 11.17(c), Project Co shall use the Project Co Parties that have been identified in the Contract Documents for specific portions of the Works and with respect to such Project Co Parties there shall be no increase in Project Co's cost or allowance for any delay in the Works Schedule.
- (d) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Assignable Subcontract Agreement for Design and Construction Contract and, subject to Section 11.17(e), to cause the Construction Contractor to cause each of the other Subcontractors, including Suppliers leasing any construction machinery and equipment, to enter into the Assignable Subcontract Agreement, to evidence that (i) the Lenders or HMQ shall have the right to cure any default by the Construction Contractor under the Subcontract and, (ii) each such Subcontract shall be assignable without the further consent of such Project Co Party and without the payment of any penalty or other amount, at the HMQ's or the Lenders' option, to HMQ or to the Lenders or to such other Construction Contractor as HMQ or the Lenders may designate, which rights of assignment shall only be exercised by HMQ, such the Lenders or such other Construction Contractor in the event that this Project Agreement is terminated as a result of Project Co's default. Project Co further agrees that it shall deliver those fully executed Assignable Subcontract Agreements that are identified in Schedule 8 – List of Project Co Parties in accordance with the time frames specified therein.

- (e) In respect of contracts with Project Co Parties having a total estimated cost of \$[REDACTED] or less, neither Project Co nor the Construction Contractor is obliged to enter into an Assignable Subcontract Agreement, provided that Project Co shall cause the Construction Contractor to ensure that each Subcontract entered into with a Project Co Party is assignable without such Project Co Party's further consent and without the payment of any penalty or other amount at HMQ's option, to HMQ or the Lenders or to such other Construction Contractor as HMQ or the Lenders may designate, which rights shall only be exercised by HMQ, the Lenders or such other Construction Contractor in the event that this Project Agreement is terminated as a result of Project Co's default.
- (f) Notwithstanding Section 1.2(c), in the case of any item of the Works being specified under the heading of more than one trade section, Project Co shall decide which of these trades is to perform the Works.

### **11.18 Labour and Products**

- (a) Unless otherwise stipulated elsewhere in the Contract Documents or in other documents made available to Project Co by HMQ, Project Co shall, as appropriate, provide separate metering for all services and facilities necessary for the performance of the Works. Project Co shall arrange for delivery of materials and equipment to the Project in accordance with the Works Schedule.
- (b) Products shall be free from faults, improper workmanship and defects and in conformance with the Contract Documents. Products which are not specified shall be of a quality best suited to the purpose required and their use shall be subject to the approval of the HMQ Representative.
- (c) Project Co shall (i) maintain good order and discipline among all personnel engaged in respect of the Works and shall promote and maintain a good relationship with all such personnel; (ii) not employ any persons to perform the Works who is/are incompatible with other labour employed by Project Co in connection with the Works; and (iii) act promptly on all problems of labour relations including grievances and jurisdictional disputes. Project Co shall not employ on the Works anyone not skilled in the task assigned to him and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property.
- (d) At HMQ's instruction, Project Co shall promptly remove from the Site any employee who represents a threat to the safety or progress of the Project or whose conduct may be considered as harassment in the workplace of any person who is an employee of HMQ under the Human Rights Code (Ontario).
- (e) Project Co is responsible for the safe on-site storage of Products and their protection (including Products supplied by HMQ and other contractors) in such a way so as to avoid dangerous conditions or contamination to the Products or other persons or property, and in locations at the Site satisfactory to HMQ.



### **11.19 Documents at the Site**

- (a) Project Co shall keep one copy of the current digital files of the Contract Documents, Works Schedule, submittals, reports, Variations, 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 HMQ, Lenders' Consultant and the HMQ Representative. Project Co shall keep a daily log available to HMQ, Lenders' Consultant and the HMQ Representative at all times.
- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Contract Documents at the Site in good order and available to the HMQ Representative and Lenders' Consultant and their representatives for the duration of the Works.

### **11.20 Use of the Works**

- (a) Project Co shall confine construction machinery and equipment, storage of Products, and operations of employees to limits indicated by Applicable Law or the Contract Documents and shall not unreasonably encumber the Works with Products.
- (b) Project Co shall not load or permit to be loaded any part of the Works with a weight or force that will endanger the safety of the Works.
- (c) HMQ shall have the right to enter and occupy the Works in whole or in part for the purpose of placing fittings, furniture and equipment or for other uses, including the intended use of HMQ before Substantial Completion, as provided for in the Works Schedule. Project Co shall cooperate with HMQ and the HMQ Representative, so as to permit HMQ to occupy and to place such fittings, furniture and equipment in the most efficient manner possible. Such entry and occupation shall not be considered an acceptance of the Works or in any way relieve Project Co from responsibility to complete this Project Agreement.

### **11.21 Cutting and Remedial Work**

- (a) Project Co shall do the cutting and remedial work required to integrate the several parts of the Works in a cohesive manner.
- (b) Project Co shall coordinate the Works to ensure that this requirement is kept to a minimum.
- (c) Cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Works.

### **11.22 Cleanup**

- (a) Project Co shall maintain the Works in a tidy condition and free from the accumulation of waste products and debris, other than that caused by HMQ, HMQ's other contractors or their employees.

- (b) Project Co shall remove waste products and debris, other than that resulting from the work of HMQ, HMQ's other contractors or their employees, and shall leave the Works clean and suitable for occupancy by HMQ on the Substantial Completion Date. Project Co shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining Works.
- (c) Prior to application for the final certificate for payment, Project Co shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of HMQ, HMQ's other contractors or their employees.
- (d) In the event of any dispute regarding the removal of waste products, debris, tools, equipment, and the like, HMQ shall provide a written notice to Project Co to remove the said waste and debris and allow a reasonable period of time for Project Co to remove the said materials. If Project Co fails to remove the materials within the time specified, HMQ may remove the waste products and debris and withhold an amount equal to such cost, in an amount that the HMQ Representative shall determine to be reasonable.

### **11.23 Project Co Attending Meetings**

- (a) Project Co shall attend meetings with respect to the Works as may be directed by the HMQ Representative. Project Co shall not claim any extra compensation for attendance at these meetings. Each of Project Co and HMQ shall designate a representative to attend such meetings who is able to make decisions on each of their respective behalves.

### **11.24 Defective Works**

- (a) Project Co shall promptly remove from the Site and replace or re-execute defective Works that fails to conform to the Contract Documents whether or not the defective Works has been incorporated in the Works and whether or not the defect is the result of poor workmanship, use of defective Products or damage through carelessness or other act or omission of Project Co. The correction of defective Works shall be at Project Co's expense. Project Co shall rectify, in a manner acceptable to the HMQ Representative, all defective Works and deficiencies throughout the Works, whether or not they are specifically identified by the HMQ Representative, and Project Co shall prioritize the correction of any defective Works so as not to interfere with or derogate from the Works Schedule, provided that Project Co shall prioritize the correction of any defective Works that in the Sole Discretion of HMQ is determined to adversely affect the day to day operation of HMQ.
- (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 HMQ Representative it is not expedient to correct defective Works or Works not performed as provided in the Contract Documents, HMQ may deduct from the amount of the Guaranteed Price the difference in value between the work as performed and that called for by the Contract Documents. If HMQ and Project Co do

not agree on the difference in value, they shall refer the matter to the HMQ Representative for a determination and the determination will be issued as a Variation.

### **11.25 Additional Works**

- (a) HMQ reserves the right to carry out Additional Works. HMQ may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co.
- (b) In connection with the Additional Works, HMQ shall:
  - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with the Works during the performance of the Works;
  - (ii) enter into separate contracts with Additional Contractors under conditions of contract which are compatible with the conditions of this Project Agreement and provide for compliance by Additional Contractors with Section 11.25(c) and all directions of Project Co in respect of any matter regarding health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works during the performance of the Works in those cases where HMQ has requested Project Co to proceed in accordance with Section 11.25(c);
  - (iii) ensure that insurance coverage is provided as would be required by a prudent HMQ similarly situated and coordinate such insurance with the insurance coverage of Project Co as it affects the Works and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED]; and
  - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall, during the performance of the Works:
  - (i) where HMQ has assigned to Project Co the matters referred to in Section 11.25(a) and subject to the performance by HMQ of its obligations under Sections 11.25(b)(i) and 11.25(b)(ii), provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works;
  - (ii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;

- (iii) participate with HMQ and Additional Contractors in reviewing their construction schedules when directed to do so by HMQ;
  - (iv) where part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to HMQ in writing and prior to proceeding with that part of the Works, any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against HMQ by reason of such readily apparent deficiencies; and
  - (v) where HMQ has assigned to Project Co the matters referred to in Section 11.25(a) and subject to the performance by HMQ of its obligations under Sections 11.25(b)(i) and 11.25(b)(ii), for the Additional Contractors and in respect to such Additional Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety, including all the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act* (Ontario) prior to Substantial Completion and, at the request of HMQ exercised in a manner consistent with the said Act, at any time that Project Co is acting as a ‘constructor’ on the Site following Substantial Completion.
- (d) In the case of Additional Works carried out prior to Substantial Completion, if:
- (i) any Additional Contractors cause any damage to the Works;
  - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
  - (iii) subject to the performance by Project Co of its obligations under Sections 11.25(c)(i), 11.25(c)(ii), 11.25(c)(iii), and 11.25(c)(v), if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Works (other than Additional Works that are required to meet the Output Specifications and provided such Additional Works are performed by such Additional Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with HMQ),
- then, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.
- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors have reciprocal obligations and HMQ has made commercially reasonable efforts to ensure that such provisions are included in the contracts with the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with HMQ contains a similar agreement to arbitrate.

- (f) (i) Project Co shall have a period of 10 Business Days following notice from HMQ of HMQ's intention to carry out Additional Works including a reasonable description of such Additional Works to request a Variation if such Additional Works are (A) reasonably expected to make a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, void or (B) reasonably expected to have a material negative consequence on Project Co's ability to perform any of the Works;
- (ii) if Project Co has made a request for a Variation in accordance with Section 11.25(f)(i), HMQ shall, within 10 Business Days of such request, either issue a Variation Enquiry or give notice to Project Co that it does not agree that a Variation is required;
- (iii) either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of Works for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iv) where HMQ has, under Section 11.25(f)(ii), given notice to Project Co that it does not agree that a Variation is required, HMQ shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
- (A) HMQ shall not be entitled to withdraw any such Variation Enquiry unless HMQ determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 11.25(f)(i)) or will not result in any material negative consequence on Project Co's ability to perform any of the Works and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
- (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.
- (h) Without limiting the generality of this Section 11.25, Project Co and HMQ acknowledge and agree that on and after September 30, 2014, HMQ shall be required to mobilize Additional Contractors on the Site to conduct Additional Works necessary for the ARL Spur Line and ARL T1 Station to achieve commercial operation in time for the Pan/Parapan American Games. Project Co acknowledges that it has been notified of the

need for these Additional Works and is solely responsible for requesting sufficient information about these Additional Works so that these Additional Works will not have a material negative consequence on Project Co's ability to perform any of the Works, and HMQ shall provide such information acting reasonably. Project Co further acknowledges that it shall not be entitled to a Variation under Section 11.25(f) in respect of these Additional Works.

### **11.26 Temporary Supports, Structures and Facilities**

- (a) Project Co shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures, and facilities and the design and execution of construction methods required in their use. Any review of Project Co's temporary supports, structures, or facilities or any shop drawings related thereto by HMQ or HMQ Representative does not relieve Project Co of its "sole responsibility" under this section.
- (b) Project Co shall engage registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in Section 11.26(a) where required by law or by the Contract Documents and in all cases, where such temporary supports, structures, and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- (c) Notwithstanding the provisions of Sections 11.11, 11.26(a) and 11.26(b) or provisions to the contrary elsewhere in the Contract Documents, where such Contract Documents include designs for temporary supports, structures and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the Works and Project Co shall not be held responsible for that part of the design or the specified method of construction. Project Co shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the Works.

### **11.27 Protection of Work and Property**

- (a) Project Co shall protect the Works and the property of HMQ and the GTAA at the Site, including the property adjacent to the Site, from damage which may arise as a result of Project Co's operations under this Project Agreement, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by HMQ, the HMQ Representative or any Additional Contractor retained by HMQ directly and whose contract is not assigned to Project Co, their respective agents and employees.
- (b) Should Project Co, in the performance of this Project Agreement, damage the Works, the property of HMQ and the GTAA at the Site, including the Existing Facilities or property adjacent to the Site, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Works or the property of HMQ and the GTAA at the Site, including the Existing Facilities for which Project Co is not responsible, as provided in

Section 11.27(a), Project Co shall Make Good such damage to the Works and, if HMQ so directs, to the property of HMQ and the GTAA and the Guaranteed Price and Contract Time shall be adjusted as provided in Schedule 22 – Variation Procedure.

- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to adjoining property or acknowledge the same was caused or occasioned by Project Co, without first consulting HMQ and receiving written instructions as to the course of action to be followed.
- (e) Notwithstanding Section 11.27(d), 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 Project Co Party has caused damage to the work of an Additional Contractor related to the Project, Project Co agrees upon due notice to settle with the Additional Contractor by negotiation or arbitration in accordance with Section 11.25(e) and Schedule 27 – Dispute Resolution Procedure. If the Additional Contractor makes a claim against HMQ on account of damage alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.25(e) and Schedule 27 – Dispute Resolution Procedure.

#### **11.28 [Intentionally Deleted]**

#### **11.29 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) Any deficiency, defect or error in the Works or non-compliance with the requirements of this Project Agreement, including the structural, mechanical, electrical and other performance standards set out in the Output Specifications, shall collectively be referred to as a “**Construction Defect**”.
- (c) For a period of three years from the Substantial Completion Date (the “**Warranty Period**”), Project Co shall at its own cost and expense correct and make good all Construction Defects arising in respect of the Works. For all work to correct deficient, defective and non-compliant Works completed within the initial Warranty Period, the Warranty Period shall be extended in respect of such corrected Works until the date that

is the later of (i) the initial Warranty Period; and (ii) the date that is two years from the date of the last work completed in respect of such correction.

- (d) In addition to the obligation to correct and make good Construction Defects during the Warranty Period, Project Co shall at its own cost and expense correct and make good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works (“**Construction Latent Defect**”), provided HMQ 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).
- (e) In addition, Project Co shall comply with the warranty requirements in respect of those items listed in Section 9.0(a) of Part 1 of Part 15-2 of Schedule 15 – Output Specifications. Notwithstanding any provision in the Project Agreement, Project Co’s obligations under this Section 11.29(e) shall survive the termination of this Project Agreement and shall continue until the end of the warranty period specified in respect of such items listed in Section 9.0(a) of Part 1 of Part 15-2 of Schedule 15 – Output Specifications.
- (f) The warranties described in this Section 11.29 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any items of equipment or material called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such equipment or material.

### **11.30 Prompt Repair of Warranty Work**

- (a) Project Co acknowledges that the timely performance of warranty work is critical to the ability of HMQ to maintain effective operations of the ARL Spur Line and the ARL T1 Station. Project Co further acknowledges that if HMQ is unable to contact Project Co and/or obtain the corrective work within such time period required by HMQ (which for greater certainty shall consist of an initial on site visit by Project Co within 24 hours of being notified of the warranty work by HMQ for any issue, which in the Sole Discretion of HMQ, is related to the safety or reliable operations of the ARL Service, 72 hours for work which, in the Sole Discretion of HMQ, does not directly impact the operations of the ARL Service, or such earlier time as reasonably required in the circumstances), acting reasonably, that HMQ’s own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the Works, at Project Co’s sole cost and expense, and except in the case of damage caused by HMQ’s own forces, such emergency steps taken by HMQ’s own forces shall not invalidate any warranties in respect of such portion of the Works affected by such corrective actions of HMQ’s own forces.
- (b) After the Final Completion Date, HMQ shall cause Project Co to be granted access to the Site for the purpose of performing such warranty work that is required pursuant to Sections 11.29 and 11.30. Project Co acknowledges that such access to the Site may be subject to such limitations as may be imposed by HMQ.



### **11.31 Warranty Letter of Credit**

- (a) Prior to the Substantial Completion Payment Date, Project Co shall deliver, or cause to be delivered, to HMQ an irrevocable letter of credit (the “**Warranty Letter of Credit**”) substantially in the form of Schedule 29 - Warranty Letter of Credit in the amount of \$[REDACTED]. Project Co acknowledges that it is a condition to the payment of the Substantial Completion Payment that Project Co delivers to HMQ the Warranty Letter of Credit prior to the Substantial Completion Payment Date.
- (b) Unless the Warranty Letter of Credit is drawn by HMQ in accordance with the provisions of this Project Agreement, HMQ shall release and deliver the Warranty Letter of Credit to Project Co on the day following the expiry of the Warranty Period as extended pursuant to Section 11.29(c).
- (c) HMQ shall be entitled to draw on the Warranty Letter of Credit:
  - (i) in the event that HMQ’s own forces are required to take emergency steps in accordance with Section 11.30 and Project Co fails to reimburse HMQ within 30 days of receiving an invoice for the cost of such emergency steps;
  - (ii) Project Co is in breach of its warranty obligations under Section 11.29 and Project Co fails to cure such breach within 30 days of being provided notice of such breach by HMQ;
  - (iii) 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 12 – Performance Guarantee of Construction Guarantor.

## **12. REPRESENTATIVES**

### **12.1 The HMQ Representative**

- (a) Subject to the limitations set out in Section 12.1(d), the HMQ Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the HMQ Representative and such other functions and powers of HMQ under this Project Agreement as HMQ may notify Project Co from time to time.
- (b) HMQ may, from time to time by written notice to Project Co, change the HMQ Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no HMQ Representative has been appointed, or when the HMQ Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the HMQ Representative’s functions under this Project Agreement, HMQ shall perform or may, by written notice to Project Co, promptly appoint an alternative HMQ Representative to perform the functions which would otherwise be performed by the HMQ Representative. Upon receipt of such written notice, Project Co and the Project Co

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

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

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

### **12.3 Communications to Representatives**

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

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

## **13. WORKS SCHEDULE**

### **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 Works Schedule**

- (a) Project Co shall:
- (i) **[Intentionally Deleted]**
  - (ii) prepare and submit to HMQ and the Independent Certifier as soon as practical and in any event within 45 days of Financial Close, a detailed computerized Works Schedule using a critical path method (“CPM”) network and a Works Schedule dependent cash flow forecast, each in a form approved by HMQ. The planning and schedule software shall be Primavera 5.0 or other software compatible with Primavera 5.0 that supports the completion of the Works in accordance with Section 13.1. The Works Schedule and any other schedule related reporting requirements of Project Co shall conform to the phasing and sequencing requirements for the Works as set out in the Contract Documents, including the work to be completed by HMQ’s own forces or by other contractors, the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, the Output Specifications, including, the sequencing requirements, the schedule for Commissioning of the Works and for achieving the Scheduled Substantial Completion Date and the Scheduled Final Completion Date. HMQ shall provide Project Co with comments on the draft schedule in accordance with Schedule 10 - Review Procedure, provided that the period for review of such draft schedule shall be 20 Business Days rather than the 15 Business Days prescribed in Section 2.4 of Schedule 10 - Review Procedure. Project Co shall revise the draft schedule to the extent required by Schedule 10 - Review Procedure within 30 days of receipt of any comments from HMQ. When agreed by the Parties, the draft schedule shall become the Works Schedule;
  - (iii) continuously monitor the progress of the Works in relation to the Works Schedule and the cash flow and update the Works Schedule and the cash flow forecast with the Works Reports, maintain the continuity of the Works Schedule’s CPM network for all updates and revisions and immediately notify HMQ of any variance or potential variance in the scheduled completion dates;
  - (iv) advise the HMQ Representative of any revisions required to the Works Schedule as a result of extension of the Contract Time in accordance with Schedule 22 – Variation Procedure;
  - (v) identify potential variances between scheduling and scheduled completion dates, review the schedule of Works not started or incomplete and implement necessary adjustments in the Works Schedule in order to meet the Scheduled Substantial Completion Date and the Scheduled Final Completion Date set out in the Works Schedule, including the movement of manpower and equipment in response to availability of work areas;
  - (vi) comply with the Works Schedule so as not to interfere with the activities of HMQ in the Existing Facilities;

- (vii) monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Works Schedule and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met;
  - (viii) 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;
  - (ix) pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items; and
  - (x) in consultation with the Independent Certifier and the HMQ Representative, include in the Works Schedule the integration of the equipment Output Specifications, rough-in requirements, supply and installation, including of HMQ's equipment to ensure that the ordering, delivery, receiving and supply of equipment does not impact on the Works Schedule.
- (b) The Works Schedule shall be prepared in accordance with Good Industry Practice for a large complex project and shall be in sufficient detail so as to enable the HMQ Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works. Given the size and complexity of the Project, the Works Schedule shall include no fewer than 1,000 activities.
- (c) Without limiting the generality of Section 13.2(b), the Works Schedule shall, at a minimum, include:
- (i) major milestone events, which shall include at a minimum the Works Milestones;
  - (ii) the dates that key decisions must be made by HMQ to support the progress of the Works;
  - (iii) all design related activities, including the proposed date for each Design Review Meetings;
  - (iv) the proposed date for each Works Submittal;
  - (v) all construction activities, including subcontract work, both on and off the Site;
  - (vi) all procurement activities undertaken by the Construction Contractor with respect to materials and equipment, including timelines for shop drawings, manufacturing periods and dates of delivery to the Site;
  - (vii) all Project Co Commissioning and HMQ Commissioning activities;
  - (viii) the manpower requirements for each activity, including subcontract work;

- (ix) a manpower histogram, both overall and by trade;
- (x) a cumulative “S”-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date;
- (xi) projected Design and Construction Contract cash flows; and
- (xii) the Schedule Cushion (in accordance with Section 30.2(j)).

### **13.3 Changes to Critical Path**

- (a) Any changes to the critical path of the Works Schedule initiated by Project Co which affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by HMQ. Subject to the terms of Schedule 22 – Variation Procedure, any HMQ approval of such changes to the critical path does not entitle Project Co to a Variation, an extension of the Contract Time or an addition to the Guaranteed Price.

### **13.4 Failure to Maintain Schedule**

- (a) Without limiting any other provision of this Project Agreement but subject to Section 30, if, at any time:
  - (i) the actual progress of the Works has significantly fallen behind the Works Schedule, including, for clarity, any failure of Project Co to achieve a Works Milestone; or
  - (ii) HMQ is of the opinion that:
    - (A) the actual progress of the Works has significantly fallen behind the Works Schedule; or
    - (B) Project Co will not achieve Substantial Completion by the Longstop Date,

Project Co shall be required:

  - (iii) within 5 Business Days of receipt of notice from HMQ, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
    - (A) a report identifying the reasons for the delay; and
    - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
      - (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or

- (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4(a)(iii)(B) and approved by the HMQ Representative.
- (b) Project Co shall notify the HMQ Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.

#### **13.4A Project Co Delay**

- (a) Notwithstanding Section 13.4 and without limiting any other provision of this Project Agreement but subject to Section 30, before Substantial Completion, if at any time:
  - (i) the actual progress of the Works has fallen behind the Works Schedule by a period of 30 calendar days;
  - (ii) Project Co fails to achieve a Works Milestone; or
  - (iii) HMQ is of the opinion that:
    - (A) the actual progress of the Works has fallen behind the Works Schedule by a period of 30 calendar days; or
    - (B) Project Co will fail to achieve a Works Milestone,

Project Co shall be required:

- (iv) within five Business Days of receipt of notice from HMQ, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
  - (A) a report identifying the reasons for such delay or failure;
  - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay or to achieve the Works Milestone; and
  - (C) confirm that Project Co can achieve Substantial Completion by the Scheduled Substantial Completion Date; and
- (v) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4A(a)(iv)(B) and approved by the HMQ Representative.
- (b) If Project Co does not, as determined by the Independent Certifier, bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4A(a)(iv)(B), HMQ may, in its sole discretion, concurrently issue to Project Co and the Lenders' Agent a "**Project Co Delay Notice**" and, upon the issuance of such notice, a

“**Project Co Delay**” shall arise. In the event of a Project Co Delay, HMQ shall direct Project Co to accelerate the performance of the Works to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4A(a)(iv)(B) or otherwise achieve the Works Milestone and/or eliminate or significantly reduce the delay described in Section 13.4A(a) to the satisfaction of the Independent Certifier and Project Co agrees that any costs associated with performing such acceleration of the Works shall be at Project Co’s own expense. The Project Co Delay shall end upon Project Co bringing the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4A(a)(iv)(B) or otherwise achieving the Works Milestone and/or eliminating or significantly reducing the delay described in Section 13.4A(a) to the satisfaction of the Independent Certifier. For greater clarity, the issuance of a Project Co Delay Notice or the occurrence of a Project Co Delay shall not constitute a Project Co Event of Default except to the extent that such occurrence of a Project Co Delay is not remedied or causes or contributes to a failure to achieve Substantial Completion prior to the Longstop Date.

### **13.5 Notification of Early Substantial Completion**

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

### **13.6 Works Report**

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the HMQ Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
  - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
  - (ii) an updated Works Schedule, in both summary and detailed formats;



- (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
- (iv) an update on those matters set out in Schedule 17 – Works Report Requirements; and
- (v) all in form and substance satisfactory to HMQ, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated or revised Works Schedule.

### **13.7 Weekly Status Report**

- (a) Project Co shall prepare and deliver a weekly report to HMQ by end of business on Friday of every week between the date of this Project Agreement and the Final Completion Date. The weekly report shall summarize the Works completed by Project Co during the week to which it relates and set out the Works planned to be completed over the two weeks that follow the date of the report. The weekly report shall include the following information:
  - (i) Prior to acceptance of the design by HMQ, design activities that occurred during the week and those planned over the two (2) weeks that follow;
  - (ii) Construction activities by major trade that occurred during the week and those planned over the two (2) weeks that follow;
  - (iii) Major equipment deliveries that occurred during the week and planned major deliveries over the two weeks that follow; and
  - (iv) The workforce average for the week.

## **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 following 3 representatives appointed by HMQ:
    - (A) the HMQ Representative; and
    - (B) 2 other representatives appointed by HMQ from time to time.
  - (ii) 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 and the Design Compliance Consultant shall be entitled to, but not required to, attend meetings as non-voting members of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) The HMQ Representative shall be the chairperson of the Works Committee.

#### **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 Works Schedule;
  - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
  - (iv) any quality assurance and safety issues;
  - (v) the Works Reports;
  - (vi) any special matters referred to the Works Committee by HMQ or Project Co;
  - (vii) any community and media relations issues in accordance with Schedule 18 - Communications Protocol;
  - (viii) monitoring the Final Commissioning Program; and
  - (ix) 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 Works Milestone, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
- (iii) any Variation;
- (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
- (v) any matter with respect to which HMQ has a right of consent or in respect of which HMQ may exercise discretion pursuant to this Project Agreement.

### **14.3 Term of Works Committee**

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

### **14.4 Replacement of Committee Members**

- (a) HMQ shall be entitled to replace any of its representatives on the Works Committee by written notice to Project Co. HMQ will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of HMQ, not to be unreasonably withheld or delayed.

### **14.5 Procedures and Practices**

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

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

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

#### **14.6 Equipment Subcommittee**

- (a) The Parties shall, within 30 days after the date of this Project Agreement, establish an equipment subcommittee of the Works Committee (the “**Equipment Subcommittee**”) consisting of two representatives of each Party.
- (b) The Equipment Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the equipment to be installed in connection with or incorporated into the Works, as contemplated by the Contract Documents.
- (c) The primary role of the Equipment Subcommittee shall be to coordinate the installation of all equipment in a timely and efficient manner and in accordance with the Works Schedule.
- (d) The Equipment Subcommittee shall be responsible for receiving and reviewing all matters related to the equipment and shall make recommendations to the Works Committee in connection therewith.

- (e) The members of the Equipment Subcommittee may adopt such procedures and practices for the conduct of the activities of the Equipment Subcommittee as they consider appropriate from time to time.

## **15. QUALITY ASSURANCE**

### **15.1 Quality Plans and Systems**

- (a) Project Co shall cause all of the Works to be the subject of quality management systems, which shall include a Design Quality Plan and a Construction Quality Plan (collectively, the “**Quality Plans**”), which may be incorporated into one document.
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications and the Final Commissioning Program.
- (c) The Design Quality Plan is attached as part of Schedule 11 - Design Quality Plan and Construction Quality Plan.
- (d) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11 - Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to HMQ within 60 days following Financial Close.
- (e) All Quality Plans shall be subject to review by HMQ pursuant to Schedule 10 - Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 - Review Procedure.
- (f) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Works in compliance with the Quality Plans, including by causing the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan.
- (g) Where any aspect of the Works is performed by more than one Project Co Party, then this Section 15, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 15 to such Project Co Party, including the Construction Contractor, shall be construed accordingly.

### **15.2 Changes to Quality Plans**

- (a) Project Co shall submit to HMQ, in accordance with Schedule 10 - Review Procedure, any changes to any of the Quality Plans required to comply with Section 15.1, and shall amend such Quality Plans as required pursuant to Schedule 10 - Review Procedure.

### **15.3 Quality Manuals and Procedures**

- (a) If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to

HMQ at the time that the relevant Quality Plan, or part thereof or change thereto, is submitted in accordance with Schedule 10 - Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan, or part thereof or change thereto, in accordance with Schedule 10 - Review Procedure.

#### **15.4 Quality Monitoring**

- (a) Without limiting HMQ's other rights pursuant to this Project Agreement, including Section 26, HMQ may, from time to time, directly or indirectly, perform periodic monitoring, spot checks and auditing of Project Co's quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Project Co shall ensure that HMQ also has the right to perform periodic monitoring, spot checks and auditing of both the Construction Contractor's quality management systems.
- (b) Project Co shall cooperate, and shall cause the Construction Contractor to cooperate, with HMQ in monitoring quality management systems and shall provide HMQ with all information and documentation reasonably required in connection with HMQ's rights under this Section 15.4.

### **16. LICENCE**

#### **16.1 Licence to Site**

- (a) Effective from the date of Financial Close and subject to this Project Agreement, HMQ hereby grants to Project Co and all Project Co Parties such non-exclusive sub-licence rights of use and access to, on and over the Site and ARL Spur Line and ARL T1 Station as are required by Project Co and sufficient to allow Project Co to perform the Works.
- (b) In consideration for the sub-licence granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of HMQ's rights hereunder, in particular, the rights of access to the Site and ARL Spur Line and ARL T1 Station of HMQ and GTAA prior to the Substantial Completion Date for purposes of the HMQ Commissioning, HMQ acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and HMQ shall provide, access to the Site and the ARL Spur Line and ARL T1 Station without material interference by HMQ, any HMQ Party or the GTAA from the date of Financial Close until the expiry of the sub-licence pursuant to this Section 16.1.
- (d) None of the rights granted pursuant to this Section 16.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of HMQ, the GTAA or an agent of the Province which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works. HMQ shall provide, or cause to be provided to, Project Co limited access to the Existing Facilities to the extent necessary to perform the Works provided Project Co

- obtains the prior written consent of HMQ, which consent may be subject to such reasonable conditions as are imposed by HMQ.
- (e) The sub-licence provided in this Section 16.1 shall automatically terminate on the Final Completion Date or upon the earlier termination of the Project Agreement in accordance with its terms.
  - (f) Project Co acknowledges that a portion of the contiguous lands are not included in the Site, such portion being potential development lands for another facility or other commercial development, and that if such lands are developed during the performance of the Works, that such lands will be designated as a separate construction site and that road access to the Site by Project Co may be required to be shared with the other persons for such facility or facilities.
  - (g) Project Co in exercising its rights under Section 16.1(a) and 16.1(c) will do so in a manner which does not materially interfere with the access to the contiguous lands by other persons during the performance of the Works and Project Co and the Project Co Parties shall (i) work co-operatively together with such other persons to develop an access protocol to prevent material adverse interference with the access of either of them and (ii) enter into an access protocol agreement incorporating the principles of this Section 16.1 with such persons and at such times as identified by HMQ from time to time.
  - (h) HMQ shall include an obligation in its third party agreements with the other persons developing the contiguous lands during the performance of the Works that (i) such persons not materially interfere with the access of Project Co to the Site and work co-operatively with Project Co to develop an access protocol to prevent material adverse interference with the access of either of them and (ii) such persons enter into an access protocol agreement with Project Co incorporating the principles of this Section 16.1 where HMQ has required Project Co to enter into such an agreement pursuant to Section 16.1(g).
  - (i) Without limiting the foregoing, Project Co shall with such other persons, and HMQ shall so direct such other persons, cooperate and coordinate in a commercially reasonable manner concurrent construction activities including, phasing of construction works, access to services, air rights and crane swing, shoring and related matters. It is expressly acknowledged that neither Project Co nor such other persons has, or shall have any presumptive rights over the adjacent sites, and accordingly each shall be required to interact in a commercially reasonable manner in the circumstances. In addition, Project Co acknowledges that the interaction with such other persons as contemplated by the foregoing provisions under this Section 16.1, shall not, in any event, be cause for justifiable delay by Project Co in performance hereunder pursuant to Section 30.1(a)(vi), nor support any claim for additional compensation, unless Project Co has fully performed its obligations under this Section 16.1 and under any access protocol agreement and such other persons have failed to meet their obligations and Project Co has no further cause of action against such persons.

## **16.2 Non-Exclusive Licence of Site**

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that HMQ and any person authorized by HMQ, including the GTAA, may occupy and possess the Site, the ARL Spur Line and ARL T1 Station.
- (b) Without limiting Section 16.2(a), Project Co acknowledges that HMQ may, from time to time, use or develop (including by way of subdivision), or permit the use or development of, portions of the Site other than those portions of the Site contained within the building footprint of the ARL Spur Line and ARL T1 Station and those other portions of the Site necessary for the performance of the Works. To the extent that such use or development materially adversely interferes with Project Co's sub-licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Works, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

## **16.3 Limited Access Areas**

- (a) For purposes related to security and confidentiality, HMQ may limit or restrict Project Co's and each Project Co Party's access to designated portions of the ARL Lands and the Lay Down Areas unless a person seeking access obtains the prior written consent of HMQ, which consent may be subject to such reasonable conditions as are imposed by HMQ.

## **16.4 Naming and Signage**

- (a) Project Co acknowledges that HMQ reserves and retains (i) all rights to designate the name for the Site, the ARL Spur Line and ARL T1 Station and any part thereof; (ii) all rights to signage in relation to the Site and the ARL Spur Line and ARL T1 Station; and (iii) all rights, trade-marks, naming or branding regarding the Site, the ARL Spur Line and ARL T1 Station or any part thereof. It is agreed, however, that with the prior written consent of HMQ, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines including the guidelines set out in Schedule 18 – Communications Protocol, Project Co, the Project Co Parties and the Lenders may, for the period prior to Substantial Completion, erect and maintain signage at or on the Site or Project (which may include such parties' logos and trade names) identifying their respective roles in connection with the construction of the Project, in a number and location and having a size and quality previously approved by HMQ.

## **16.5 No Interest in Land**

- (a) Project Co acknowledges and agrees that, subject to the provisions of the *Construction Lien Act* (Ontario), 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 Site or the ARL Spur Line and ARL T1 Station, or any other interest in land pursuant to this Project Agreement, the Implementing Agreements or otherwise. Notwithstanding



any provision herein or in any of the Implementing Agreements to the contrary, all fee simple interest in and freehold title to the Site, 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 Site and the ARL Spur Line and ARL T1 Station under and subject to the licenses granted under this Article 16 and the Lenders' Direct Agreement, respectively.

**16.6 Grant and Licence under Schedule 33 - Transfer of Metrolinx Obligations to the GTAA onto Project Co**

- (a) For greater certainty, the provisions of this Section 16 in so far as they relate to the ARL Corridor, ARL Lands and Lay Down Areas are subject to the provisions of Article 2 of Schedule 33 - Transfer of Metrolinx Obligations to the GTAA onto Project Co.

**17. TITLE ENCUMBRANCES**

**17.1 Title Encumbrances**

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of HMQ, other than:
- (i) all obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of HMQ;
  - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;
  - (iii) obligations under any Title Encumbrance which the City of Mississauga and the GTAA may formally relieve or waive, with the consent of HMQ, with respect to any Development Approval; and
  - (iv) obligations under the Title Encumbrances that Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for HMQ performing.
- (b) Project Co shall perform the Works 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, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Site or 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 against the Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party and has not been consented to in writing by HMQ, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, HMQ will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (c) Notwithstanding the provisions of this Section 17.2, the Parties acknowledge that the provisions of Section 2.5 of Schedule 20 – Payments and Holdbacks shall apply to claims for lien made against the Site pursuant to the *Construction Lien Act* (Ontario) and shall also apply to claims made against the Legislative Holdback.

**17.3 Construction Lien Act (Ontario)**

- (a) The Parties acknowledge that the foregoing provisions of Section 17.2 shall apply to claims for lien made upon or against the Site pursuant to the *Construction Lien Act* (Ontario) and shall also apply to claims made against HMQ or the Legislative Holdback as though such a claim were an Encumbrance against the Site as referred to therein.
- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the *Construction Lien Act* (Ontario) and Section 17.3(e) and shall deal with such holdbacks in accordance with the *Construction Lien Act* (Ontario) and Section 17.3(e).
- (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 Lien Act* (Ontario), require that a certificate of completion under Section 33(1) of the *Construction Lien Act* (Ontario) for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the *Construction Lien Act* (Ontario) and/or Section 17.3(e) and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co and HMQ agree to comply with the requirements of the *Construction Lien Act* (Ontario) with respect to the Site and the Project whether or not any part of the Site or the

Project is subject to the provisions of the *Construction Lien Act* (Ontario). For greater certainty, Project Co and HMQ hereto covenant and agree to assume and undertake the same obligations that would exist if the Project was subject to the *Construction Lien Act* (Ontario) with respect to any part or parts of the Site or Project to which the *Construction Lien Act* (Ontario) does not apply.

## **18. SITE CONDITION**

### **18.1 Acceptance of Site Condition**

- (a) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 7.4, 18.2 and 18.3, Project Co shall not be entitled to make any claim of any nature whatsoever against HMQ, any HMQ Party or the GTAA on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not HMQ, a HMQ Party or the GTAA, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.
- (b) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) performed all necessary Site due diligence and investigations and inspected and examined the Site and its surroundings and any existing works on, over or under the Site;
  - (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
  - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site;
  - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
  - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and

- (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Works in a lawful manner.

## **18.2 Contamination**

- (a) HMQ shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
  - (i) that was described in or was properly inferable, readily apparent or readily discoverable from the Environmental Reports or the Geotechnical Reports;
  - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence; or
  - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which HMQ is responsible pursuant to Section 18.2(a), Project Co shall immediately inform the HMQ Representative and shall comply with Applicable Law in respect thereof at HMQ's cost pursuant to Section 18.2(d).
- (c) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.2(b), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ's cost pursuant to Section 18.2(d).
- (d) If Sections 18.2(b) and 18.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of Contamination for which HMQ is responsible pursuant to Section 18.2(a) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

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

- (a) As between the Parties, all fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of HMQ.

- (b) Upon the discovery of any item referred to in Section 18.3(a) during the course of the Works, Project Co shall:
  - (i) immediately inform the HMQ Representative of such discovery;
  - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
  - (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including Schedule 19 - Heritage Guidelines and Protocols.
- (c) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.3(b), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 18.3(b) and 18.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

## **19. GTAA, CITY OF MISSISSAUGA AND THIRD PARTY FINANCIAL OBLIGATIONS**

### **19.1 GTAA, City of Mississauga and Third Party Financial Obligations**

- (a) Subject to Section 19.2, Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to the GTAA, the City of Mississauga, 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 or the Site;
  - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
  - (iii) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
  - (iv) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.

- (b) The Parties agree that any refund, partial rebate or credit granted by the GTAA, the City of Mississauga, 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 HMQ to the extent such Financial Obligations were paid by HMQ and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

## **19.2 HMQ Financial Obligations**

- (a) HMQ shall be responsible for all Financial Obligations required under the HMQ Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of HMQ.

## **20. HMQ ACCESS AND MONITORING**

### **20.1 HMQ Access**

- (a) Subject to Section 20.1(b), but without limiting any of HMQ's rights in respect of the Site, Project Co acknowledges and agrees that HMQ and the HMQ Parties shall have unrestricted access to the Site, the ARL Spur Line and ARL T1 Station, and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours.
- (b) In exercising their access rights under Section 20.1(a), HMQ and the HMQ Parties shall:
- (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for HMQ's own use);
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
  - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

### **20.2 Increased Monitoring**

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

Project Agreement. Project Co will compensate HMQ for any reasonable costs incurred as a result of such increased monitoring.

### **20.3 Right to Open Up**

- (a) HMQ shall have the right, at any time prior to the Final Completion Date, to request Project Co to open up and inspect (or allow HMQ to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where HMQ reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When HMQ makes such a request, HMQ shall include reasonably detailed reasons with such request.
- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to HMQ and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by HMQ of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

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

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

## **21. [INTENTIONALLY DELETED]**

## **22. GREENHOUSE GAS CREDITS**

### **22.1 [INTENTIONALLY DELETED]**

### **22.2 Greenhouse Gas Credits**

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

## **23. INDEPENDENT CERTIFIER**

### **23.1 Appointment**

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

### **23.2 Role of Independent Certifier**

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

### **23.3 Changes to Terms of Appointment**

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

### **23.7 Replacement**

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

## **24. COMMISSIONING AND COMPLETION**

### **24.1 Commissioning Activities**

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

## **24.2 Final Commissioning Program**

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect of the Project Co Commissioning and the HMQ Commissioning and shall provide a copy thereof to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
  - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
    - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
    - (B) Final Completion on or before the Scheduled Final Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the HMQ Commissioning activities;
  - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on HMQ than those set out in the Outline Commissioning Program, unless otherwise agreed to by HMQ;
  - (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
  - (vi) include a schedule of each of the Project Co Commissioning Tests and the HMQ Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the HMQ Commissioning;
  - (viii) provide for the re-verification of systems following the HMQ Commissioning; and
  - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.

- (c) HMQ shall provide Project Co with comments on the draft Final Commissioning Program in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required by Schedule 10 - Review Procedure within 30 days of receipt of any comments from HMQ.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

### **24.3 Commencement of Project Co Commissioning**

- (a) Project Co shall give 30 days written notice to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative of the proposed commencement of the Project Co Commissioning.
- (b) Project Co shall give at least 5 Business Days' notice to, and shall invite, the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

### **24.4 Substantial Completion Certificate**

- (a) (i) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.
- (c) HMQ shall, within 5 Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 24.4(c), the Parties shall cause the Independent Certifier to determine whether the

conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, to determine whether any Minor Deficiencies exist, and to issue to HMQ and to Project Co either:

- (i) the Substantial Completion Certificate, setting out in such certificate the Substantial Completion Date and the Minor Deficiencies List (if applicable) in accordance with Section 24.8; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

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

- (f) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, 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 Schedule 27 - Dispute Resolution Procedure.

## **24.5 Operation and Maintenance Manuals**

- (a) Project Co shall prepare and deliver to HMQ all necessary operation and maintenance manuals for the ARL Spur Line and ARL T1 Station 30 days prior to the Substantial Completion Date.

#### **24.6 HMQ Commissioning**

- (a) The Parties acknowledge that the HMQ Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give HMQ full access to the Site, the ARL Spur Line and ARL T1 Station and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable HMQ to undertake the HMQ Commissioning in accordance with the Final Commissioning Program. HMQ shall comply, and shall ensure that all HMQ Parties comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Works in performing the HMQ Commissioning.
- (b) HMQ acknowledges that, during the HMQ Commissioning Period, Project Co and each Subcontractor will be active in the ARL Spur Line and ARL T1 Station in both the rectification of Minor Deficiencies and the completion of Project Co Commissioning, and HMQ shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the HMQ Commissioning Period, Project Co and each Subcontractor shall cooperate with HMQ and all HMQ Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the HMQ Commissioning activities are able to be completed in the timeframe for completion set out in the Final Commissioning Program.

#### **24.7 Countdown Notice**

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Substantial Completion Date) on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 90 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) Project Co acknowledges and agrees that HMQ requires a minimum of 90 days notice prior to the Anticipated Substantial Completion Date to prepare for the HMQ Commissioning.
- (d) In accordance with Section 13.5(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of HMQ, in its sole discretion.

#### **24.8 Minor Deficiencies**

- (a) In the event that Minor Deficiencies exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ, shall, within 15 Business Days of the Substantial Completion Notice, prepare a list of all Minor Deficiencies (the “**Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of HMQ’s use and enjoyment of the ARL Spur Line and ARL T1 Station or disruption of the Works.
- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are such Minor Deficiencies.
- (d) HMQ may, in its sole discretion, waive any requirement for Substantial Completion and the failure to meet any such requirement shall constitute a Minor Deficiency.

#### **24.9 Rectification of Minor Deficiencies**

- (a) Project Co shall, in consultation with the HMQ Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Works complete and rectify all Minor Deficiencies within 45 days of the issuance of the Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the ARL Spur Line and ARL T1 Station.

#### **24.10 Failure to Rectify Minor Deficiencies**

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

HMQ may:

- (iii) withhold from the next payment or payments otherwise due to Project Co a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for HMQ to complete and rectify all such Minor Deficiencies (to the extent then outstanding) (the “**HMQ Holdback**”), which holdback shall be held in an interest bearing account; and
  - (iv) engage others to perform the work necessary to complete and rectify any such Minor Deficiencies, at the risk and cost of Project Co, and HMQ may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of each Minor Deficiency, HMQ shall release to Project Co the amount of the HMQ Holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, HMQ shall release to Project Co the then remaining amount of the holdback, together with all interest accrued thereon. Where HMQ exercises its rights pursuant to Section 24.10(a)(iv), if the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse HMQ for all such excess cost.

#### **24.11 Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the “**Final Completion Notice**”) upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied. The Final Completion Notice shall also include the following documentation:
  - (i) Project Co’s written request for release of holdback, including a declaration that no written notices of lien arising from the performance of the Works have been received by it;
  - (ii) Project Co’s Statutory Declaration CCDC 9A;
  - (iii) Project Co’s WSIB Certificate of Clearance; and
  - (iv) a written statement that the Works has been performed to the requirements of the Contract Documents, itemizing approved changes in the Works, the Independent Certifier’s written instructions, and modifications required by Governmental Authorities.

- (c) HMQ shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the 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 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 24.11(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, and to issue to HMQ and to Project Co either:
- (i) the Final Completion Certificate, setting out in such certificate the Final Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.11(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.15(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.

#### **24.12 Effect of Certificates/Use**

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by HMQ of any part of the ARL Spur Line and ARL T1 Station 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
- (ii) be construed as an approval by HMQ of the Works or the way in which they have been carried out.

## **25. HUMAN RESOURCES**

### **25.1 Admittance of Personnel**

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

### **25.2 Confirmation of Action**

- (a) Any action taken under Section 25.1 shall promptly be confirmed by HMQ to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

### **25.3 Notification of Personnel**

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

### **25.4 Finality as to Admission**

- (a) Any decision of HMQ made pursuant to Section 25.1 shall be final and conclusive.

### **25.5 Staff Competency**

- (a) Project Co shall ensure that:
  - (i) all employees 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
  - (ii) 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 employees to ensure the proper performance of this Project Agreement.

**25.6 [Intentionally Deleted]**

**25.7 [Intentionally Deleted]**

**25.8 [Intentionally Deleted]**

**25.9 Disciplinary Action**

- (a) HMQ, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Site or at work is otherwise considered by HMQ to be undesirable or to constitute a threat to the health and/or safety of any of the users of the Site. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise HMQ in writing of the outcome of any disciplinary action taken in respect of such person.

**25.10 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 HMQ and all Project Co Parties.

**25.11 Management Organizations**

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

**26. RECORDS, INFORMATION AND AUDIT**

**26.1 Records Provisions**

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

**26.2 Information and General Audit Rights**

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to HMQ all information, reports, documents, records and the like, including as referred to in Schedule 26 - Record Provisions, in the possession of, or available to, Project Co as HMQ may reasonably require from time to time for any purpose in connection with this

- Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to HMQ, and shall require each Subcontractor, including the Construction Contractor, to provide to HMQ (at HMQ's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 26.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as HMQ may reasonably require from time to time to enable HMQ to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Site, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide HMQ with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Works, or the Site, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify HMQ of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 - Record Provisions, which are required to be provided to or available to HMQ hereunder, shall be subject and open to inspection and audit by HMQ at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless HMQ and Project Co otherwise agree. HMQ shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of HMQ monitoring and auditing such parts of the Works, including providing them with access and copies (at HMQ's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of HMQ's costs for the inspections, audits and monitoring shall be borne by HMQ.
- (f) In conducting an audit of Project Co under Section 26.2(e) or as otherwise provided under this Project Agreement, HMQ shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at HMQ's reasonable cost) of all books and records of Project Co required to be provided to

or available to HMQ hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with HMQ and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with HMQ all matters arising from such audits, including the refunding of monies to HMQ where applicable. At the reasonable request of HMQ's auditors, Project Co shall provide such information, reports, documents and records as HMQ's auditors may reasonably require, other than Sensitive Information.

- (g) HMQ's rights pursuant to this Section 26.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) HMQ's rights pursuant to this Section 26.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

### **26.3 Copy of Lenders' Consultant Reports to be provided to HMQ**

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 5.2 of Schedule 4 - Lenders' Direct Agreement, the Lenders' Consultant to provide HMQ 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 and/or Project Co.

## **27. COMMUNICATIONS**

### **27.1 Communications Protocol**

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

## **28. CHANGES IN LAW**

### **28.1 Performance after Change in Law**

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

### **28.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on

whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and

- (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
  - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 - Variation Procedure.

### **28.3 Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 28.3.
- (b) On the occurrence of a Relevant Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in

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

- (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
- (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
  - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
    - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
    - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
  - (F) any entitlement to compensation payable shall be in accordance with this Section 28.3, and any calculation of compensation shall take into consideration, inter alia:
    - (I) any failure by a Party to comply with Section 28.3(b)(iii)(E);
    - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Guaranteed Price under this Project Agreement;
    - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and

- (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 30 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 28.3, and Section 31 shall be construed accordingly.

## **29. VARIATIONS**

### **29.1 Variation Procedure**

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 - Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 - Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of HMQ to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works, including in relation to the whole or any part of the Works.
- (c) Without limiting Project Co's obligations pursuant to Section 11.12 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.

### **29.2 Innovation and Value Engineering**

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

- (ii) any Variation resulting from a Change in Law.
- (d) The Innovation Proposal must:
  - (i) set out sufficient detail to enable HMQ to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request HMQ to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes HMQ requires as a result;
  - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and HMQ;
  - (v) indicate if there are any dates by which a decision by HMQ must be made;
  - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
  - (vii) include such other information and documentation as may be reasonably requested by HMQ to fully evaluate and consider the Innovation Proposal.
- (e) HMQ shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
  - (i) the Innovation Proposal affects the quality of the Works, the ARL Spur Line and ARL T1 Station, or the likelihood of successful completion of the Works;
  - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the ARL Spur Line and ARL T1 Station;
  - (iii) the Innovation Proposal will interfere with the relationship between HMQ and third parties;
  - (iv) the financial strength of Project Co is sufficient to deliver the changed Works, as applicable;
  - (v) the residual value of the Site, ARL Spur Line and ARL T1 Station is affected;
  - (vi) the Innovation Proposal materially affects the risks or costs to which HMQ is exposed; or
  - (vii) any other matter HMQ considers relevant.



- (f) HMQ may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) HMQ may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If HMQ accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Contract 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 HMQ, and HMQ'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 HMQ to decrease, the net savings in the costs of HMQ will be shared:
  - (i) equally by Project Co and HMQ for the first 5 years following the implementation of the Innovation Proposal; and
  - (ii) thereafter, HMQ shall be entitled to the full benefit of the net savings in costs (if applicable),and Project Co's share of the net savings shall be reflected in a lump sum payment.

### **30. DELAY EVENTS**

#### **30.1 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 (A) any Works Milestone by the applicable date for completion of such Works Milestone set out in the Works Schedule; or (B) 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) if Project Co is delayed in the performance of the Works by:
    - (A) acts or omissions of HMQ or any HMQ Party contrary to the provisions of this Project Agreement; or

- (B) a stop work order issued by a Governmental Authority, provided that such order was not issued as a result of an act, omission or fault of Project Co or a Project Co Party;
- (iii) any breach by HMQ of any of HMQ's obligations under this Project Agreement (including any delay by HMQ in giving access to the Site pursuant to Section 16.1, any obstruction of the rights afforded to Project Co under Section 16.1 or any delay by HMQ in carrying out its obligations set forth in Schedule 10 - Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
- (iv) 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 HMQ in respect of the same or a similar component of the Works or subset of the Works;
- (v) a requirement pursuant to Sections 18.2(b) or 18.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (vi) a requirement pursuant to Sections 18.3(b) or 18.3(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement, provided however that the foregoing shall not apply to the extent that any item referred to in Section 18.3(a) was disclosed in or properly inferable, readily apparent or readily discoverable from the Background Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Deadline;
- (vii) subject to compliance by Project Co with the provisions of Section 11.25, the execution of Additional Works on the Site by Additional Contractors;
- (viii) a requirement pursuant to Section 13.1 of Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of HMQ during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;

- (ix) an event of Force Majeure;
- (x) [Intentionally Deleted]; or
- (xi) a Relevant Change in Law.

### **30.2 Consequences of a Delay Event**

- (a) Project Co shall provide written notice to the HMQ Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the HMQ Representative and the Independent Certifier which shall include:
  - (i) a statement of which Delay Event the claim is based upon;
  - (ii) details of the circumstances from which the Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon (A) the date for the completion of any applicable Works Milestone; or (B) the Scheduled Substantial Completion Date, as applicable; and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the HMQ Representative and the Independent Certifier.
- (c) The HMQ Representative shall, after receipt of written details under Section 30.2(a), or of further particulars under Section 30.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the HMQ Representative may reasonably consider necessary. Project Co shall afford the HMQ Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 30, the HMQ Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised (A) date for the completion of the applicable Works Milestone; (B) Scheduled Substantial Completion Date; or (C) Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:

- (i) the date of receipt by the HMQ Representative of Project Co's notice given in accordance with Section 30.2(a) and the date of receipt of any further particulars (if such are required under Section 30.2(c)), whichever is later; and
  - (ii) the date of receipt by the HMQ Representative of any supplemental information supplied by Project Co in accordance with Section 30.2(b) and the date of receipt of any further particulars (if such are required under Section 30.2(c)), whichever is later.
- (e) [Intentionally Deleted].
- (f) If:
- (i) the HMQ Representative declines to fix a revised (A) date for the completion of any applicable Works Milestone; (B) Scheduled Substantial Completion Date; or (C) Scheduled Final Completion Date, as applicable;
  - (ii) Project Co considers that a different (A) date for the completion of any applicable Works Milestone; (B) Scheduled Substantial Completion Date; or (C) Final Completion Date, as applicable, should be fixed; or
  - (iii) there is a dispute as to whether a Delay Event has occurred,
- then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (g) If the Works should be 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 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 of the Contract Time.
- (h) Where there are concurrent delays, some of which are caused by HMQ or others for whom HMQ 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 either an extension in the Contract Time 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 items on the critical path of the Works Schedule where the time period over which such delays occur overlap in time, but only for the duration of the overlap.

- (i) HMQ shall provide Project Co with access to and use of the Site as required pursuant to Article 16 of this Project Agreement in a manner consistent with the Works Schedule and in accordance with the notification requirements and restrictions set out in the Contract Documents, provided that Project Co agrees that the inability of HMQ to provide Project Co with access to an area for construction activities not on the critical path for reasons generally outlined in Sections 11.16(b), will not result in a claim by Project Co for a change in the Guaranteed Price or the Contract Time.
- (j) Project Co acknowledges and agrees that the Contract Time includes a Schedule Cushion in the Works Schedule at no additional cost to HMQ. Project Co shall separately identify the extent of the Schedule Cushion in the Works Schedule.
- (k) Project Co acknowledges and agrees that in the event that an extension of the Contract Time is allowed under any provision of this Project Agreement, HMQ may, in its Sole Discretion, elect to apply any portion of the Schedule Cushion with the result that such extension of the Contract Time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion HMQ has elected to apply.
- (l) For greater certainty, no extension of the Contract Time resulting from a Delay Event shall be allowed, unless the Delay Event on which the claim is based extends the critical path of the Works Schedule or the attainment of any of the Works Milestones, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, and in no case shall the extension of the Contract Time be more than the necessary extension of the critical path as a result of the Delay Event.

### **30.3 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 in accordance with Good Industry Practice:
  - (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;
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable; and
  - (iv) remedy any failure to perform.
- (b) To the extent that Project Co does not comply with its obligations under this Section 30.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.

## **31. COMPENSATION EVENTS**

### **31.1 Definition**

- (a) For the purposes of this Project Agreement, “**Compensation Event**” means any event referred to in Sections 30.1(a)(ii), 30.1(a)(iii), 30.1(a)(iv), 30.1(a)(v), 30.1(a)(vi), 30.1(a)(vii) and 30.1(a)(viii) 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.

### **31.2 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 31. 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 30.1(a)(i);
  - (ii) Section 33, in the case of a Delay Event referred to in Section 30.1(a)(ix);
  - (iii) [Intentionally Deleted]; and
  - (iv) Section 28, in the case of a Delay Event referred to in Section 30.1(a)(xi).
- (b) Subject to Sections 31.3 and 31.4, if it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to all Direct Losses incurred or suffered by it as a result of the Compensation Event, as approved by HMQ and the Independent Certifier and processed as a Variation Confirmation, and any increase to the Cost of the Financing, as determined in accordance with Section 1.9 of Schedule 22 – Variation Procedure.
- (c) Notwithstanding any other provision in this Project Agreement, including Section 31.2(b), where HMQ elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall not be entitled to any Direct Losses or any other additional compensation related to the time that is reduced or eliminated by the Schedule Cushion.

### **31.3 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 31 in relation to any Compensation Event.
- (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 relief pursuant to this Section 31.

### **31.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 31 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. [INTENTIONALLY DELETED]**

### **33. FORCE MAJEURE**

#### **33.1 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) civil commotion, warlike operation, invasion, rebellion, hostilities, military or usurped power;
  - (ii) acts of God;
  - (iii) labour disputes, strikes or lockouts (including lockouts decreed or recommended for its members by a recognized contractor’s association of which Project Co or the Construction Contractor is a member or to which Project Co or the Construction Contractor is otherwise bound);
  - (iv) fire;
  - (v) unusual delay by common carriers;
  - (vi) unavoidable casualties; or
  - (vii) without limiting any of the foregoing, any cause beyond Project Co’s control,

but excluding any delay due to:

- (A) labour disputes involving only the forces of Project Co or any Project Co Party;
- (B) lack of funds;
- (C) default or negligence of Project Co or any Project Co Party;

- (D) any shortage of labour, equipment or materials, unless such shortage is due to an event which gives rise to relief under this Section 33.1;
- (E) the default, delay or failure of any Project Co Party, unless such default, delay or failure is due to an event which would give rise to relief under this Section 33.1 if such Project Co Party was a party to this Project Agreement; or
- (F) any weather (extreme or unusual) encountered in the course of completing the Works (but not including weather conditions designated by any Governmental Authority as having caused a natural disaster.)

### **33.2 Consequences of Force Majeure**

- (a) Subject to Section 33.3, 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 30.1(a)(ix):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 30; and
  - (ii) HMQ shall pay to Project Co an amount equal to any increase in the Cost of the Financing, calculated in accordance with the provisions of Section 1.9 of Schedule 22 – Variation Procedure.
- (c) If an event of Force Majeure occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 33.2(b)(ii) and 38.
- (d) Subject to Section 38, 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 33.2.

### **33.3 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. Such efforts of mitigation and remediation shall include efforts to minimize any negative impact of the event of Force Majeure on the Contract Time and/or Works Schedule.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 33.3, such failure shall be taken into account in determining 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 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 33.3(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 33.3(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.

### **33.4 Insured Exposure**

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

### **33.5 Modifications**

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 - Dispute Resolution Procedure shall not apply to a failure of HMQ and Project Co to reach agreement pursuant to this Section 33.5.

## **34. PROJECT CO DEFAULT**

### **34.1 Project Co Events of Default**

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

- (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, HMQ, a HMQ Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under Applicable Law (including the *Bankruptcy and Insolvency Act* (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 34.1(a)(i)(A);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder;  
or
- (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 34.1(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 34.1(a)(i)(A), (B), or (C), constitute a Project Co Event of Default;

- (ii) Project Co failing to achieve Substantial Completion prior to September 30, 2014 (the “**Longstop Date**”). In the event that the Scheduled Substantial Completion Date is extended pursuant to Section 30 as a result of a Delay Event, the Longstop Date shall be extended by the same number of days as the extension applied to the Scheduled Substantial Completion Date;
- (iii) Project Co either:
  - (A) failing to deliver a rectification plan under Section 13.4(a)(iii)(B);
  - (B) delivering a rectification plan under Section 13.4(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
  - (C) delivering a rectification plan under Section 13.4(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 13.4(a)(iii)(B)(II);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works, or that may compromise HMQ’s reputation or integrity or the nature of the Province’s transportation system, so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from HMQ;
- (v) Project Co committing a breach of Sections 40 or 41 or a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 34.1(a)(i) to (iv) inclusive or 34.1(a)(vi) to (xv) inclusive) other than where such breach is a consequence of a breach by HMQ of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on HMQ;
    - (II) put forward, within 5 Business Days of receipt of notice of such breach from HMQ, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of

- notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 34.1(a)(v)(A):
- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on HMQ;
  - (II) Project Co shall, within 3 Business Days after notice from HMQ, submit a plan and schedule, which HMQ shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
  - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 34.1(a)(v)(B), or HMQ, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement;
- (vii) Project Co failing to comply with Sections 47.1 or 47.3;
- (viii) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 47.4;
- (ix) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through HMQ) within 45 days of the earlier of:
- (A) the registration of such Encumbrance against title to the 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;

- (x) Project Co failing to pay any sum or sums due to HMQ under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from HMQ;
- (xi) Project Co failing to comply with Section 48;
- (xii) Project Co failing to comply with Section 8.3;
- (xiii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement, and:
  - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xiv) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 - Dispute Resolution Procedure;
- (xv) Project Co failing to comply with Section 25.5;
- (xvi) a default by Project Co or any Project Co Party under any of the Implementing Agreements following the expiry of any applicable notice and cure periods thereunder; or
- (xvii) a breach of the provisions of Schedule 33 – Transfer of Metrolinx Obligations onto Project Co or a negligent act or omission of Project Co that causes HMQ to fail to perform any of its material covenants and obligations under Schedule 33 – Transfer of Metrolinx Obligations onto Project Co.

### **34.2 Notification of Occurrence**

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

### **34.3 Right to Termination**

- (a) On the occurrence of a Project Co Event of Default, or at any time after HMQ becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 - Dispute Resolution Procedure that a Project Co Event of Default has occurred, HMQ may, subject to Section 34.4, 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.

### **34.4 Remedy Provisions**

- (a) In the case of a Project Co Event of Default referred to in Sections 34.1(a)(i)(B), 34.1(a)(i)(C), 34.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 34.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 34.1(a)(i)(B) or 34.1(a)(i)(C)), 34.1(a)(iii), 34.1(a)(iv), 34.1(a)(vi), 34.1(a)(vii), 34.1(a)(viii), (where the Project Co Event of Default referred to in Section 34.1(a)(viii) is capable of being remedied), 34.1(a)(x), 34.1(a)(xii), 34.1(a)(xiii) (where the Project Co Event of Default referred to in Section 34.1(a)(xiii) is not in respect of insurance), 34.1(a)(xiv), or 34.1(a)(xv), HMQ shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:
- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to HMQ, acting reasonably; and
  - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 34.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, HMQ shall have 5 Business Days from receipt of the same within which to notify Project Co that HMQ does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which HMQ shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 34.4(a), occurs and:

- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on HMQ; or
- (ii) Project Co fails to put forward a plan and schedule pursuant to Section 34.4(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 34.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 34.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

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

- (d) Notwithstanding that HMQ may give the notice referred to in Section 34.4(a), and without prejudice to the other rights of HMQ in this Section 34.4, at any time during which a Project Co Event of Default is continuing, HMQ may, at Project Co's risk and expense, take such steps as HMQ considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 34.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and HMQ shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

### **34.5 HMQ's Costs**

- (a) Project Co shall reimburse HMQ for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by HMQ in exercising its rights under this Section 34, including any relevant increased administrative expenses. HMQ shall take commercially reasonable steps to mitigate such costs.

### **34.6 No other Rights to Terminate**

- (a) HMQ shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 34 and 36.

## **35. HMQ DEFAULT**

### **35.1 HMQ Events of Default**

- (a) For the purposes of this Project Agreement, “**HMQ Event of Default**” means any one or more of the following events or circumstances:
- (i) HMQ failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by HMQ in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
    - (A) in respect of the Substantial Completion Payment, such failure continues for 10 Business Days; or
    - (B) in respect of any other payment due and payable by HMQ to Project Co under this Project Agreement, such failure continues for 90 days,in any such case, from receipt by HMQ of a notice of non-payment from or on behalf of Project Co;
  - (ii) HMQ committing a material breach of its obligations under Section 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 its obligations under this Project Agreement for a continuous period of not less than 60 days; or
  - (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement for a continuous period of not less than 60 days .

### **35.2 Project Co’s Options**

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



### **35.3 Project Co's Costs**

- (a) HMQ shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 35, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

### **35.4 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.

## **36. NON-DEFAULT SUSPENSION AND TERMINATION**

### **36.1 [Intentionally Deleted]**

### **36.2 Termination for Delay or Force Majeure**

- (a) If all or substantially all of the Works should be stopped or otherwise delayed for a continuous period of 180 days or more (or if HMQ reasonably believes that such a delay is reasonably likely to occur) as a result of the occurrence of any one or more events of Force Majeure or events described in Sections 30.1(a)(ii)(B), which may result in an extension of the Contract Time, HMQ may, by giving Project Co written notice, terminate this Project Agreement.
- (b) If all or substantially all of the Works should be stopped or otherwise delayed for a continuous period of 180 days or more as a result of the occurrence of any one or more events of Force Majeure or events described in Sections 30.1(a)(ii) to 30.1(a)(viii) or 36.5(a), Project Co may, by giving HMQ written notice, terminate this Project Agreement provided that Project Co shall:
  - (i) at all times following the occurrence of any one or more of the events described in Sections 30.1(a)(ii) and 30.1(a)(iii), take all reasonable steps to prevent and mitigate the effects of any delay;
  - (ii) at all times during which any one or more of the events described in Section 30.1(a)(ii) and 30.1(a)(iii) is subsisting, take all steps in accordance with Good Industry Practice to overcome or minimize the consequences of the event; and
  - (iii) take all reasonable steps to mitigate its losses and costs resulting from the occurrence of any one or more of the events described in Sections 30.1(a)(ii) and 30.1(a)(iii).

### **36.3 Termination for Convenience**

- (a) HMQ shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days written notice to Project Co.
- (b) In the event of notice being given by HMQ in accordance with this Section 36.3, HMQ shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.

### **36.4 [Intentionally Deleted]**

### **36.5 Suspension**

- (a) HMQ may order Project Co in writing to suspend or interrupt all or any part of the Works for such period of time as HMQ may determine to be appropriate for the convenience of HMQ. This right of HMQ to suspend or interrupt the Works shall not give rise to any duty on the part of HMQ to exercise this right for the benefit of Project Co or any other person or entity. In the event of an HMQ-ordered suspension of the Works not resulting from Project Co or a Project Co Party not performing its obligations under this Project Agreement, such suspension shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. The Independent Certifier is not authorized to order a suspension of the Works. The Works shall only be suspended by written notice from HMQ to Project Co.
- (b) If the Works are stopped for any reason, Project Co shall provide protection for any part of the Works likely to become damaged during the Works stoppage. HMQ shall pay the costs of such protection only if stoppage occurs due to the occurrence of a Delay Event.

## **37. EFFECT OF TERMINATION**

### **37.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination, this Section 37 shall apply in respect of such termination.

### **37.2 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.

### **37.3 Continuing Performance**

- (a) Subject to any exercise by HMQ of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 - Compensation on Termination), notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 37.

### **37.4 Effect of Notice of Termination**

- (a) On the service of a notice of termination:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to HMQ as shall not already have been transferred to HMQ pursuant to Section 43.1, Project Co shall transfer to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), such part of the Works as shall have been constructed and, if HMQ so elects:
    - (A) all plant, equipment and materials (other than those referred to in Section 37.4(a)(i)(B)) on or near to the Site shall remain available to HMQ for the purposes of completing the Works; and
    - (B) all construction plant and equipment shall remain available to HMQ for the purposes of completing the Works, subject to payment by HMQ of the Construction Contractor's reasonable charges;
  - (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to HMQ (to the extent such items have not already been delivered to HMQ) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works;
  - (iii) in so far as title shall not have already passed to HMQ pursuant to Section 43.1 or Section 37.4(a)(i), Project Co shall hand over to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), the ARL Spur Line and ARL T1 Station 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 HMQ, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by HMQ in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;

- (iv) if HMQ so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the 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 HMQ or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor shall be made by HMQ pursuant to, and subject to, the terms of the Assignable Subcontract Agreement for Design and Construction Contract;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if HMQ so elects, execute such sale) to HMQ at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 - Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), 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 ARL Spur Line and ARL T1 Station, and reasonably required by HMQ in connection with the operation of the ARL Spur Line and ARL T1 Station;
- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the ARL Spur Line and ARL T1 Station; and
- (vii) Project Co shall deliver to HMQ all information, reports, documents, records and the like referred to in Section 26, including as referred to in Schedule 26 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to HMQ).

### **37.5 Ownership of Information**

- (a) Subject to Section 39, 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 shall be the property of HMQ and upon termination of this Project Agreement shall be provided or returned to HMQ, as applicable, in electronic format

acceptable to HMQ, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

### **37.6 Provision in Subcontracts**

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that HMQ shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 37.

### **37.7 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 HMQ pursuant to Section 37.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from HMQ requiring it to do so, HMQ may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
  - (ii) forthwith deliver to the HMQ Representative:
    - (A) all keys to, and any pass cards and other devices used to gain access to any part of the ARL Spur Line and ARL T1 Station; and
    - (B) to the extent transferable and without prejudice to HMQ's rights pursuant to Section 39, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the ARL Spur Line and ARL T1 Station; and
  - (iii) as soon as practicable vacate the Site and shall leave the Site and the ARL Spur Line and ARL T1 Station in a safe, clean and orderly condition.

### **37.8 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 37, this Project Agreement shall terminate and, except as provided in Section 37.9, all rights and obligations of HMQ and Project Co under this Project Agreement shall cease and be of no further force and effect.

### **37.9 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, 7, 8, 9, 11.29 to 11.31, 17.2, 18.1, 18.3(a), 23.6, 24.16, 26, 34.5, 35.3, 37, 38, 39, 40, 41, 43, 44, 45, 46, 48.3, 49.1, 51.4, 51.8, 51.9, 51.10, 51.11, 51.12 of this Project Agreement, Schedule 23 - Compensation on Termination, Schedule 24 – Financial Model, 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.

### **38. COMPENSATION ON TERMINATION**

#### **38.1 Compensation on Termination**

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

### **39. INTELLECTUAL PROPERTY**

#### **39.1 Representation and Warranty**

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

#### **39.2 Delivery of Project Data and Intellectual Property Rights**

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, HMQ free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to

HMQ on the aforesaid terms of this Section 39.2, for any and all of the Approved Purposes.

### **39.3 Licence of Project Data and Intellectual Property Rights**

(a) Project Co:

(i) hereby grants to HMQ an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;

(ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor, obtain the grant of an equivalent licence to that referred to in Section 39.3(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 relevant Subcontract; and

(iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor), obtain the grant of an equivalent licence to that referred to in Section 39.3(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 39.3 and Section 39.5(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.

### **39.4 Jointly Developed Materials**

(a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and HMQ pursuant to this Project Agreement or in relation to the ARL Spur Line, ARL T1 Station, the Site or Works (the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that HMQ shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of HMQ, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.

(b) HMQ hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Jointly Developed Materials for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.

- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to HMQ.

### **39.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 39 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of HMQ, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable HMQ or its nominee to access and otherwise use (as such term is defined in Section 39.3(b)), subject to the payment by HMQ of any relevant fee, such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 39.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 39 in accordance with Good Industry Practice. Project Co shall submit to the HMQ Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and HMQ shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the HMQ Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the HMQ Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 39.5(b) may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure with reference to Good Industry Practice.

### **39.6 Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against HMQ or a HMQ Party which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by HMQ or any HMQ Party 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 HMQ otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless HMQ from and against all such demands, claims, actions and proceedings and Section 44.3 shall apply.

### **39.7 HMQ Trade-Marks**

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



### **39.8 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 39 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.

### **39.9 Government Use of Documents**

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

## **40. CONFIDENTIALITY**

### **40.1 Disclosure**

- (a) Subject to Sections 40.1(b), 40.1(c) and 40.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, HMQ has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as HMQ, in its sole discretion, may consider appropriate. In exercising its discretion, HMQ will be guided by the principles set out in Sections 40.1(b) and 40.1(c).
- (b) HMQ will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA if HMQ was bound thereby.
- (c) Notwithstanding Section 40.1(b), but subject to Section 40.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), HMQ may disclose such information.

## **40.2 Redaction**

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), HMQ shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 40.1(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 40.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, and HMQ shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA, notwithstanding that such Act does not apply directly to HMQ.

## **40.3 Disclosure to Government**

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

## **40.4 Freedom of Information and Protection of Privacy Act**

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

## **40.5 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 40 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.

- (b) Project Co may:
  - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee of the Lenders and 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 each Government Entity may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. A Government Entity will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

#### **40.6 Exceptions**

- (a) Information of a Party (the "**Proprietor**") 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 HMQ upon a termination of this Project Agreement, pursuant to Section 37 or is otherwise required by HMQ for the purposes of performing (or having performed) the Works, including the design or construction of the ARL Spur Line and ARL T1 Station, the operation, maintenance or improvement of the ARL Spur Line and ARL T1 Station, 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.

#### **40.7 Survival of Confidentiality**

- (a) The obligations in Section 40.1 to Section 40.6 will cease on the date that is 3 years after the Final Completion Date and accordingly shall survive the termination of this Project Agreement.

### **41. PERSONAL INFORMATION**

#### **41.1 Protection of Personal Information**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of HMQ and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by HMQ.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of

the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Works.

- (d) Any part of the Works that involves or may involve the collection, use, storage, processing or any other handling of Personal Information shall be performed by Project Co and each Project Co Party within Canada, and Project Co shall, and shall cause each Project Co Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Personal Information outside of Canada.
- (e) Project Co shall, and shall cause each Project Co Party to, implement, maintain and adhere to appropriate policies, procedures and controls to ensure that Personal Information is not stored or processed in, communicated or transferred to, or accessed from, outside of Canada, and that the requirements of this Section 41 are otherwise complied with.
- (f) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 41.
- (g) Project Co shall allow HMQ on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 41 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of HMQ with respect to Project Co or each Project Co Party's handling of Personal Information.
- (h) 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 HMQ and without obtaining written contractual commitments of such third party substantially the same as those of this Section 41.

#### **41.2 Survival**

- (a) The obligations in this Section 41 shall survive the termination of this Project Agreement.

### **42. INSURANCE AND PERFORMANCE SECURITY**

#### **42.1 General Requirements**

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

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

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

## **43. TITLE**

### **43.1 Title**

- (a) Title to each item and part of the ARL Spur Line and ARL T1 Station, including any Products, materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to HMQ (or as HMQ may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the ARL Spur Line and ARL T1 Station or are to be affixed or attached to the ARL Spur Line and ARL T1 Station prior to Substantial Completion shall pass to HMQ (or as HMQ may direct) at the time that such items are included in the ARL Spur Line and ARL T1 Station or affixed or attached to the ARL Spur Line and ARL T1 Station. Project Co shall promptly execute and deliver to HMQ, from time to time as HMQ may require, any further documentation required to identify, evidence, perfect or protect HMQ's interest in the items whose title shall pass to HMQ pursuant to this Section 43.1, including any registrations pursuant to the *Personal Property Security Act* (Ontario). Subject to Section 11.25(d), notwithstanding the foregoing, Project Co shall continue to bear the risk of loss or damage until the date of issuance by the Independent Certifier of its certificate under Section 24.4(d) stating the Substantial Completion Date.

## **44. INDEMNITIES**

### **44.1 Project Co Indemnities to HMQ**

- (a) Project Co shall indemnify and save harmless HMQ 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 one or more of the following:
- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
  - (ii) any physical loss of or damage to all or any part of the Site and the ARL Spur Line and ARL T1 Station, or to any equipment, assets or other property related thereto;
  - (iii) the death or personal injury of any person;
  - (iv) any physical loss of or damage to property or assets of any third party; or

- (v) any other loss or damage of any third party,
- in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:
- (vi) the breach of this Project Agreement by HMQ; or
- (vii) in respect of Section 44.1(a)(i), any deliberate or negligent act or omission of HMQ or any HMQ Party; or
- (viii) in respect of Sections 44.1(a)(ii), 44.1(a)(iii), 44.1(a)(iv) or 44.1(a)(v), any act or omission of HMQ or any HMQ Party.
- (b) Project Co shall indemnify and save harmless HMQ 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 HMQ 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; or
- (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which HMQ is responsible pursuant to Section 18.2(a); or
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by HMQ or by any act or omission of HMQ or any HMQ Party.
- (d) Without prejudice to HMQ's rights under Section 34 and any other rights under this Project Agreement, if HMQ exercises its step-in rights under the Assignable Subcontract Agreement for Design and Construction Contract, Project Co shall indemnify HMQ for all obligations of Project Co assumed by HMQ under the Design and Construction Contract and for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights.
- (e) Project Co shall indemnify HMQ for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution

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

#### **44.2 HMQ Indemnities to Project Co**

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

- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by HMQ or any act or omission of HMQ or any HMQ 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;
- (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of HMQ or any HMQ 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; and
- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of HMQ or any HMQ 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 HMQ any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

(b) HMQ shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which



may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by HMQ herein.

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

#### **44.3 Conduct of Claims**

- (a) This Section 44.3 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 44, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 44.3(d), 44.3(e) and 44.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.

- (d) With respect to any claim conducted by the Indemnifier:
- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 44.3 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 44.3(d);
  - (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 44.3(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 44.3(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 44.3(d) applies. For greater certainty, Project Co acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving research confidentiality 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 44.3(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 44.3 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.

#### **44.4 Mitigation - Indemnity Claims**

- (a) For greater certainty, Section 51.4 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.

### **45. LIMITS ON LIABILITY**

#### **45.1 Indirect Losses**

- (a) Subject to Section 45.1(b), 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 44.1(a)(i) only, the exceptions in Sections 45.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, HMQ's loss of use of the ARL Spur Line and/or ARL T1 Station, or a portion thereof, which for the purposes of Section 44.1(a)(i), shall be Direct Losses.

#### **45.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein, HMQ and the HMQ Parties 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 HMQ or any HMQ Party 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.

#### **45.3 Remedy**

- (a) Nothing contained herein shall prevent or restrict the right of HMQ to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (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.

#### **45.4 Maximum Liability**

- (a) Subject to Section 45.4(b), the maximum aggregate liability of each of HMQ and Project Co in respect of all claims under Section 44 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co's maximum aggregate liability in respect of all claims under Section 44.1(a)(i) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 45.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

- (d) For greater certainty, claims arising from matters under Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co, including Section 11 thereof, are also subject to the maximum aggregate liability limits under this Section 45.4.

**46. DISPUTE RESOLUTION PROCEDURE**

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

**47. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**

**47.1 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 Implementing Agreement without the prior written consent of HMQ, which consent may be withheld in the Sole Discretion of HMQ.
- (b) Section 47.1(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 HMQ 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.

**47.2 HMQ Assignment**

- (a) HMQ may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and HMQ are parties:
- (i) to the Province or to any minister of the Province;
  - (ii) in circumstances other than those described in Section 47.2(a)(i), as may be required to comply with Applicable Law;
  - (iii) 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 HMQ under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of HMQ's obligations hereunder and under the other Contract Documents to which HMQ is a party in respect of the period from and after the assignment; and
  - (iv) in circumstances other than those described in Sections 47.2(a)(i) to 47.2(a)(iii), with the prior written consent of Project Co, not to be unreasonably withheld or

delayed; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of HMQ hereunder and under any agreement in connection with this Project Agreement to which Project Co and HMQ are parties in respect of the period from and after the assignment.

- (b) HMQ shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 47.2.

### **47.3 Subcontractors**

- (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 MTO's role (in its reasonable opinion) generally in the Province or with respect to the ARL Operations; (ii) may compromise the reputation of IO, Metrolinx, MTO, GTAA and/or the Province; (iii) may compromise the integrity of the Province or the ARL Operations; or (iv) are inconsistent with the nature of the Province's transportation system, so as to affect public confidence in that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 8.2(a), 47.3(c) and 47.3(d) or received the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (c) Subject to Section 47.3(d), if either 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 HMQ's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, 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 assignment agreement on the same or substantially similar terms as the Assignable Subcontract Agreement for Design and Construction Contract unless any material variations are approved by HMQ, acting reasonably.

### **47.4 Changes in Ownership and Control**

- (a) No Change in Ownership of Project Co, or any company of which Project Co is a subsidiary, shall be permitted:

- (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities are inconsistent with HMQ's role generally in the Province of Ontario, or may compromise the reputation or integrity of HMQ or the nature of the Province's transportation system, so as to affect public confidence in that system; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Works.
- (b) No Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of HMQ, which may be withheld in HMQ's Sole Discretion.
- (c) This Section 47.4 shall not apply to a Change in Ownership or Change in Control of companies whose equity securities or ownership units or any other ownership interests are listed on a recognized stock exchange.
- (d) Whether or not Project Co is required to obtain HMQ's consent to a Change in Ownership or Change in Control pursuant to this Section 47.4, Project Co shall provide notice to HMQ of any Change in Ownership or Change in Control of Project Co, or any company of which Project Co is a subsidiary, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement identifying the then current shareholders and their respective holdings in the voting securities of Project Co, or any company of which Project Co is a subsidiary, as the case may be.

#### **47.5 HMQ Due Diligence**

- (a) Project Co shall promptly reimburse HMQ for HMQ's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of HMQ pursuant to, or HMQ determination of Project Co's compliance with, Sections 47.1, 47.3 or 47.4, whether or not such consent is granted.

### **48. PROHIBITED ACTS**

#### **48.1 Definition**

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

- (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with HMQ or any public body in connection with the Project;

provided that this Section 48.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to HMQ or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with HMQ or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to HMQ or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to HMQ, provided that this Section 48.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to HMQ or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ or any public body in connection with the Project without contravening the intent of this Section 48;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with HMQ or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud HMQ or any other public body.

## **48.2 Remedies**

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then HMQ shall be entitled to act in accordance with the following:
  - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 34 shall apply;
  - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 34 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 HMQ may give written notice to Project Co and Section 34 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 47.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then HMQ may give notice to Project Co and Section 34 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 48.2(a)(i) to 48.2(a)(iv), then HMQ may give notice to Project Co and Section 34 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 48.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom HMQ believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 48.2, HMQ shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 48.

### **48.3 Permitted Payments**

- (a) Nothing contained in this Section 48 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.

**48.4 Notification**

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

**48.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 48, 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.

**49. NOTICES**

**49.1 Notices to Parties**

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

If to Project Co:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

with a copy to:

[REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

If to HMQ:

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5J 2W3

Fax: [REDACTED]

Attn.: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation

777 Bay Street, 9<sup>th</sup> Floor  
Toronto, Ontario M5G 2C8

Fax: [REDACTED]  
Attn: [REDACTED]

## **49.2 Notices to Representatives**

- (a) In addition to the notice requirements set out in Section 49.1, where any Notice is to be provided or submitted to the HMQ Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co Representative: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

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

Fax: [REDACTED]  
Attn.: [REDACTED]

## **49.3 Facsimile**

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 49.3.

## **49.4 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 49.1 or 49.2 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.

## **49.5 Deemed Receipt of Notices**

- (a) Subject to Sections 49.5(b), 49.5(c) and 49.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;

- (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 49.
- (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.

#### **49.6 Service on HMQ**

- (a) Where any Notice is required to be served on HMQ, the obligation to serve such Notice shall be fulfilled by serving it on HMQ in accordance with the provisions of this Section 49.

### **50. HMQ DESIGNATE**

#### **50.1 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 HMQ under this Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ for review, approval, comment, evaluation or otherwise as described in this Agreement, engage in discussions, consultations and meetings with Project Co, submitting notices and documentation to HMQ, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated Person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated Person from time to time, until the Province has notified Project Co in writing that such designated Person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice). The Province shall advise Project Co in writing of any designation hereunder. The rights and obligations of the parties to this Agreement shall be in no way affected by reason of

any such designation. Project Co acknowledges the right of the Province to delegate administrative responsibilities hereunder as set forth in this Section 50.1.

## **51. GENERAL**

### **51.1 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.

### **51.2 Waiver**

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

### **51.3 Relationship Between the Parties**

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

- (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

#### **51.4 General Duty to Mitigate**

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

#### **51.5 Actual Knowledge**

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

#### **51.6 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.

#### **51.7 No Reliance**

- (a) Each of the Parties acknowledge that:
  - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or

untrue statement made to it shall be those expressly provided for in this Project Agreement; and

- (ii) this Section 51.7 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.

### **51.8 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.

### **51.9 Enurement**

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

### **51.10 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).

### **51.11 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.

### **51.12 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.

### **51.13 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.

### **51.14 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, Output Specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

### **51.15 Proof of Authority**

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

### **51.16 Counterparts**

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

### **51.17 Government Entities as Third Party Beneficiaries**

- (a) The provisions of Sections 5.1(b), 7.1, 7.2(a), 7.3(a), 10.1(c), 11.10(a), 39.9, and 40 and each other provision of the Project Agreement which is to the benefit of a Government Entity are:
  - (i) intended for the benefit of each Government Entity and, if set out in the relevant Section, each Government Entity's directors, officers, employees, board



appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the “**Third Party Beneficiaries**”); and

- (ii) are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise.
- (b) HMQ shall hold the rights and benefits of Sections 5.1(b), 7.1, 7.2(a), 7.3(a), 10.1(c), 11.10(a), 39.9, and 40 and each other provision of the Project Agreement which is to the benefit of a Government Entity in trust for and on behalf of the Third Party Beneficiaries and HMQ hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

**51.18 Time is of the Essence**

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

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

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

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

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I have authority to bind the corporation.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**AIRLIX TRANSIT PARTNERS INC.**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR PROJECT AGREEMENT]**

TOR01: 4534885: v39

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor or Project Co) or HMQ’s own forces, engaged by HMQ to carry out the Additional Works.
- 1.2 “**Additional HMQ Payments**” means amounts payable to Project Co pursuant to any Variation or Variation Directive under which HMQ is expressly responsible for an increase to the Guaranteed Price, or any payments to be made by HMQ pursuant to Sections 4, 28, 30, 31, 32, 33 or any other payment to be made by HMQ, which, pursuant to the express provisions of the Project Agreement are to be paid as Additional HMQ Payments, but not including any progress payments made in respect of Base Progress Payments.
- 1.3 “**Additional Works**” means those works in relation to the Project or Site which are not Works and which are to be carried out by an Additional Contractor, including works to be performed either before or after Substantial Completion.
- 1.4 “**Affected GTAA Facilities**” has the meaning given in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.
- 1.5 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners, as the case may be.
- 1.6 “**Airport**” has the meaning given in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.
- 1.7 “**Airport Construction Code**” has the meaning given in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.
- 1.8 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(a).
- 1.9 “**APM Station**” has the meaning given to “**APM T1 Station**” in Schedule 33 - Transfer of Metrolinx Obligations to the GTAA onto Project Co.
- 1.10 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (b) any Authority Requirement; and

- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,

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

1.11 **“Approved Purposes”** means:

- (a) HMQ and the HMQ Parties performing their obligations under the Project Agreement and/or any other activities in connection with the Site and the ARL Spur Line and ARL T1 Station.
- (b) following termination of the Project Agreement, the design, construction and/or maintenance of the ARL Spur Line and ARL T1 Station, and/or the performance of any other operations the same as, or similar to, the Works; and
- (c) the development by Metrolinx, the MTO and/or the Province of best practices for railway transportation and related facilities in Ontario.

1.12 **“ARL Corridor”** has the meaning given in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.

1.13 **“ARL Infrastructure”** has the meaning given in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.

1.14 **“ARL Lands”** has the meaning given in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.

1.15 **“ARL Operations”** has the meaning given in Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co.

1.16 **“ARL Service”** means a passenger railway service that transports passengers and their baggage between the ARL T1 Station and Toronto Union Station in accordance with the Contract Documents.

1.17 **“ARL Spur Line”** means that portion of the ARL Service comprised of the necessary improvements, including, but not limited to, the foundations, piers, fencing, guideways, decking, track, track ballast, track appliances, special track work, signals and communication equipment, that may be constructed from the CN Track (just west of Highway 427) to the limits of the ARL T1 Station.

1.18 **“ARL T1 Station”** means the extension of the APM Station required to accommodate the ARL Service.

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

- 1.20 “**Assignable Subcontract Agreement**” means the form of agreement attached as Schedule 21 – Form of Assignable Subcontract Agreement.
- 1.21 “**Assignable Subcontract Agreement for Design and Construction Contract**” means the form of agreement to be entered into between HMQ, Project Co and the Construction Contractor in the form set out in Schedule 5 – Assignable Subcontract Agreement for Design and Construction Contract.
- 1.22 “**Associated Liabilities**” has the meaning given in Section 4.22(b).
- 1.23 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.24 “**Background Information**” means any and all drawings, reports (including the Environmental Reports and the Geotechnical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by HMQ or any HMQ Party, or which was obtained from or through any other sources to the date of the Project Agreement.
- 1.25 “**Base Progress Payments**” means all progress payments to be made in respect of the Works performed on or before the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date in respect of the Guaranteed Price, but not including any progress payments made in respect of the Additional HMQ Payments.
- 1.26 “**Beneficiary**” has the meaning given in Section 44.3(a).
- 1.27 “**Bonds**” means any one or more of the Performance Bond (which, for greater certainty, includes the Multiple Obligee Rider to Performance Bond) and Labour and Material Payment Bond (which, for greater certainty, includes the Multiple Obligee Rider to Labour and Material Payment Bond) and collectively, means all of them, which Bonds are in the forms attached as Appendices B and C, respectively, to Schedule 25 – Insurance and Performance Security.
- 1.28 “**Business Days**” 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.
- 1.29 “**CaGBC**” means the Canadian Green Building Council.
- 1.30 “**Canadian GAAP**” means 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.

- 1.31 “**Cash Allowance Account**” means Account No. [REDACTED] at [REDACTED].
- 1.32 “**Cash Allowance Amount**” means \$[REDACTED].
- 1.33 “**Cash Allowance Items**” means Category 1 – Items and Category 2 – Items.
- 1.34 “**Category 1 - Items**” means any changes at the direction of HMQ to the specifications in respect of those items listed in Articles 3.8, 3.14, 3.15, 4.2 and 4.3 of Part 3 of Schedule 15-2.
- 1.35 “**Category 2 - Items**” means any changes at the direction of HMQ to the specifications in respect of those items listed in Article 3.4 of Part 2 of Schedule 15-2.
- 1.36 “**CCO**” has the meaning given in Schedule 33.
- 1.37 “**CCO Requirements**” has the meaning given in Schedule 33.
- 1.38 “**Certified Cost to Complete**” means the value of the Works remaining to be performed under the Project Agreement following the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, as certified to HMQ by the Independent Certifier provided that for greater certainty, the Certified Cost to Complete shall not include any amount in respect of Minor Deficiencies to the extent that such amount is included in the HMQ Holdback.
- 1.39 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
  - (c) any other change of direct or indirect power to direct or cause the direction of the management, actions or policies of such person.
- 1.40 “**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.
- 1.41 “**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.

- 1.42 “**CN Track**” means that portion of the railway track owned by Canadian National Railway Company and known as the CN Weston Subdivision that extends from the ARL Spur Line to the junction with the USRC.
- 1.43 “**Commercial Close**” has the meaning given in Section 2.1(a).
- 1.44 “**Communication**” has the meaning given in Section 9.1(d)
- 1.45 “**Compensation Event**” has the meaning given in Section 31.1(a).
- 1.46 “**Compensation Payment**” means the Default Termination Payment and the Non Default Termination Sum, as defined in Schedule 23 – Compensation on Termination.
- 1.47 “**Confidant**” has the meaning given it in Section 40.6(a)(i).
- 1.48 “**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.
- 1.49 “**Construction Contractor**” means AirLINX Transit Partners JV, an unincorporated joint venture between Aecon Construction and Materials Limited and Dufferin Construction Company, a division of Holcim (Canada) Inc. engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.50 “**Construction Defect**” has the meaning given in Section 11.29(b).
- 1.51 “**Construction Document Submittals**” has the meaning given in Section 11.4(c)(ii).
- 1.52 “**Construction Guarantor**” means AirLINX Transit Partners JV, an unincorporated joint venture between Aecon Construction and Materials Limited and Dufferin Construction Company, a division of Holcim (Canada) Inc.
- 1.53 “**Construction Latent Defect**” has the meaning given in Section 11.29(d).
- 1.54 “**Construction Quality Plan**” means such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.55 “**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.
- 1.56 “**Contract Documents**” means the Project Agreement, the Design and Construction Contract and the Background Information.



- 1.57 “**Contract Time**” means the time stipulated in Section 11.10(a)(iv) of the Project Agreement from commencement of the Works to Substantial Completion and to Final Completion.
- 1.58 “**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 – Financial Model.
- 1.59 “**Cost of the Works**” means the cost to Project Co of performing the Works as set out in Schedule 24 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Contract Documents, including, for greater certainty, the Project Co Fee.
- 1.60 “**Countdown Notice**” has the meaning given in Section 24.7(a).
- 1.61 “**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.
- 1.62 “**CPIo**” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.63 “**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.
- 1.64 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.65 “**CPM**” has the meaning given in Section 13.2(ii).
- 1.66 “**Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.67 “**Default Interest Rate**” means the default interest rate as stipulated in the Credit Agreement (as defined in the Lending Agreements).
- 1.68 “**Default Termination Payment**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.69 “**Delay Event**” has the meaning given in Section 30.1(a).
- 1.70 “**Design and Bid Fee**” has the meaning given in Section 12.2(21) of the Request for Proposals.

- 1.71 **“Design and Construction Contract”** means the guaranteed price design and construction contract between Project Co and the Construction Contractor dated on or about the date of the Project Agreement in the form set out in Schedule 3 – Design and Construction Contract.
- 1.72 **“Design and Construction Work”** means the design, construction, installation, testing, commissioning and completion of the ARL Spur Line and ARL T1 Station, which for greater certainty, includes performing those obligations under Schedule 33 – Transfer of Metrolinx Obligations to the GTAA onto Project Co, and including rectification of any Minor Deficiencies, and any other related activities required pursuant to the provisions of the Project Agreement, provided, however, that for the purpose of this defined term, the term “Project Agreement” shall be deemed not to include any of the activities, covenants, terms or conditions contained in the list set out below in numbered items (a) through (o) inclusive (including the actual executed versions of the documents referred to below) and for greater certainty shall not include any covenant, agreement, undertaking or obligation related to the Financing or the Cost of the Financing:
- (a) Recitals
  - (b) Article 2
  - (c) Sections 4.2, 4.3, 4.4, 4.9 and 4.11
  - (d) Article 6
  - (e) Sections 8.3 and 8.4
  - (f) Section 34.1(a)(iv)
  - (g) Sections 47.3(c) and (d)
  - (h) Article 49
  - (i) Schedule 2 – Completion Documents
  - (j) Schedule 4- Lenders’ Direct Agreement
  - (k) Schedule 5 – Assignable Subcontract Agreement for Design and Construction Contract
  - (l) Schedule 12 – Performance Guarantee of Construction Guarantor
  - (m) Schedule 20 – Payments and Holdbacks
  - (n) Schedule 24 – Financial Model
  - (o) Schedule 31 – Project Co Information.

- 1.73 “**Design Compliance Consultant**” means the consultant hired by HMQ to review all design and construction documents and submittals along with all site activities and works to ensure compliance with the requirements of the Project Agreement.
- 1.74 “**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 ARL Spur Line and ARL T1 Station, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.75 “**Design Development Submittals**” has the meaning given in Section 11.4(c)(i).
- 1.76 “**Design Quality Plan**” means such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.77 “**Design Review Meetings**” has the meaning given in Section 11.6(a).
- 1.78 “**Design Team**” means Aecom Canada Ltd., engaged by Project Co to design the ARL Spur Line and ARL T1 Station and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.79 “**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 ARL Spur Line and the ARL T1 Station.
- 1.80 “**Direct Costs**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.81 “**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.
- 1.82 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) Railways and stations whose design, construction and financing are procured by a contract similar to the Project Agreement in relation to other similar rail lines;
  - (b) the ARL Spur Line and/or ARL T1 Station in relation to other rail lines and/or stations;
  - (c) Project Co in relation to other persons; or
  - (d) persons undertaking projects for design, construction and financing that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

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

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

1.83 **“Dispute”** has the meaning given in Section 1.1 of Schedule 27 – Dispute Resolution Procedure.

1.84 **“Emergency”** means any situation, event, occurrence, or multiple occurrences that:

- (a) constitutes or may constitute a hazard to or jeopardizes or may jeopardize the health and/or safety of persons;
- (b) causes or may cause damage or harm to property, buildings and/or equipment; or
- (c) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the ARL Spur Line and ARL T1 Station, any part of the Site, and/or the performance of the Works,

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

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

1.86 **“Environmental Reports”** means the Ecoplans Limited Contamination Overview Study titled “Georgetown South Service Expansion and Union-Pearson Railway Link”, including any additional reports referenced therein, prepared by Ecoplans Limited and dated January, 2011.

1.87 **“Equipment Subcommittee”** has the meaning given in Section 14.6(a) of the Project Agreement.

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

1.89 **“Existing Facilities”** means:

- (a) the APM Station;
- (b) the APM guideway and vehicles;

- (c) the GTAA Road Network, including roadways, bridges, signage, lighting, etc...;
  - (d) T1 Parking Garage;
  - (e) 6B Parking Garage;
  - (f) concrete bents and caissons north/west of the APM station; and
  - (g) CN Weston Subdivision tracks
- 1.90 “**Final Commissioning Program**” means the program to be jointly developed and agreed by HMQ and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.91 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies.
- 1.92 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.11(d) of the Project Agreement.
- 1.93 “**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.
- 1.94 “**Final Completion Notice**” has the meaning given in Section 24.11(b).
- 1.95 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.96 “**Financial Close Target Date**” means December 15, 2011, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.97 “**Financial Model**” means the computer spreadsheet model included in Schedule 24 – Financial Model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Works accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.98 “**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.
- 1.99 “**Financing**” means the financing with Lenders, that is consistent in all material respects with Schedule 24 - Financial Model, and the Project Agreement, to finance the Base Progress Payments until the Substantial Completion Payment Date.
- 1.100 “**Financing Plans**” has the meaning given in the Request for Proposals.

- 1.101 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario)
- 1.102 “**Force Majeure**” has the meaning given in Section 33.1(a).
- 1.103 “**Geotechnical Reports**” means the report titled “Geotechnical Investigation - Airport Rail Link Spur”, including any additional reports referenced therein, prepared by Thurber Engineering Limited and dated April 8, 2011.
- 1.104 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.105 “**Government Entity**” means any one or more of IO, Metrolinx, the Province, MOI and, MTO.
- 1.106 “**Governmental Authority**” means MOI, MTO and any other federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over HMQ, any aspect of the performance of the Project Agreement or the operation of the ARL Spur Line and ARL T1 Station, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.107 “**GTAA**” means the Greater Toronto Airports Authority.
- 1.108 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.109 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.110 “**HMQ**” means HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and *Metrolinx*, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16.
- 1.111 “**HMQ Commissioning**” means the commissioning activities to be carried out by HMQ in accordance with the Final Commissioning Program.
- 1.112 “**HMQ Commissioning Agent**” means the person appointed by HMQ as its commissioning agent.

- 1.113 **“HMQ Commissioning Period”** means the period during which HMQ is performing the HMQ Commissioning.
- 1.114 **“HMQ Commissioning Tests”** means all commissioning tests required to be performed by HMQ pursuant to the Final Commissioning Program.
- 1.115 **“HMQ Conditions”** has the meaning given in Section 2.5.
- 1.116 **“HMQ Design Team”** means any of IO, Metrolinx, their agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the ARL Spur Line and ARL T1 Station on behalf of HMQ, but excluding Project Co and any Project Co Party.
- 1.117 **“HMQ Event of Default”** has the meaning given in Section 35.1(a).
- 1.118 **“HMQ Holdback”** means any amount which HMQ may withhold from payment under Section 24.10(a)(iii) of the Project Agreement, provided for greater certainty, that where this Project Agreement provides for a deduction in respect of any HMQ Holdback, such deduction shall apply to any payments to be made by HMQ hereunder (whether to Project Co or the Lenders’ Agent), notwithstanding that the Project Agreement expressly provides for deductions from payments to be made to Project Co.
- 1.119 **“HMQ Party”** means any of IO’s and Metrolinx’ 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 ARL Operations, but excluding Project Co and any Project Co Party, and the **“HMQ Parties”** shall be construed accordingly.
- 1.120 **“HMQ Permits, Licences, Approvals and Agreements”** means those HMQ permits, licenses, approvals and agreements which are the responsibility of HMQ to obtain as set out in Appendix 1 of this Schedule 1 - Definitions and Interpretation.
- 1.121 **“HMQ Representative”** means the person designated as such by HMQ on or prior to the date of the Project Agreement and any permitted replacement.
- 1.122 **“HMQ Taxes”** means taxes, or payments in lieu of taxes, imposed on HMQ and HST and property taxes for which HMQ is responsible pursuant to Section 4 of the Project Agreement.
- 1.123 **“HMQ Trade-Marks”** means any and all Trade-Marks used by HMQ in any manner whatsoever.
- 1.124 **“HST”** means the value-added tax imposed pursuant to Part IX of the Excise Tax Act (Canada), and any successor legislation thereto.
- 1.125 **“Implementing Agreements”** means the Design and Construction Contract, the Performance Guarantee of Construction Guarantor, the Lenders’ Direct Agreement and

all other documents and agreements delivered by the Parties at Financial Close under Section 2.3, excluding the Project Agreement and the Lending Agreements.

- 1.126 “**Indemnifiable Taxes**” has the meaning given in Section 4.22(b).
- 1.127 “**Indemnifier**” has the meaning given in Section 44.3(a).
- 1.128 “**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.
- 1.129 “**Indirect Losses**” has the meaning given in Section 45.1.
- 1.130 “**Innovation Proposal**” has the meaning given in Section 29.2(b).
- 1.131 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security
- 1.132 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between HMQ, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.133 “**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.
- 1.134 “**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 ARL Spur Line and ARL T1 Station (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
  - (b) the Project Agreement.
- 1.135 “**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.
- 1.136 “**IO**” means the Ontario Infrastructure and Lands Corporation, as agent for Her Majesty The Queen in Right of Ontario, as represented by the Minister of Infrastructure, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32.
- 1.137 “**IPFP Framework**” has the meaning given in Recital D.
- 1.138 “**Irrecoverable Tax**” has the meaning given in Section 4.18(b).
- 1.139 “**Jointly Developed Materials**” has the meaning given in Section 39.4(a).
- 1.140 “**Labour and Material Payment Bond**” means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 25 – Insurance and Performance Security.
- 1.141 “**Lay Down Areas**” has the meaning given in Schedule 33.
- 1.142 “**Legislative Holdback**” means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
- 1.143 “**Lenders**” means any or all of the persons who provide the Financing.
- 1.144 “**Lenders Condition**” has the meaning given in Section 2.4(b) of the Project Agreement.
- 1.145 “**Lenders’ Agent**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.146 “**Lenders’ Consultant**” means any consultant appointed from time to time by the Lenders. Nothing contained in the Contract Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Contract Documents shall constitute direction and/or control by HMQ, Project Co or the Lenders.
- 1.147 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between HMQ, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.148 “**Lending Agreements**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.149 “**Longstop Date**” has the meaning given in Section 34.1(a)(ii).
- 1.150 “**Make Good**”, “**Made Good**” and derivatives thereof, means repairing, restoring, refurbishing, rehabilitating or performing filling operation on the Works as required under the Contract Documents or 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.
- 1.151 “**Metrolinx**” means Metrolinx, as agent for Her Majesty The Queen in Right of Ontario, continued under the *Metrolinx Act, S.O. 2006*, Chapter 16, and its successors and assigns.
- 1.152 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) which would not materially impair HMQ’s use and enjoyment of the ARL Spur Line and ARL T1 Station (including for the HMQ Commissioning).
- 1.153 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a).
- 1.154 “**MOI**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.155 “**MTO**” means the Ministry of Transportation of Ontario, and includes any successors thereto or persons exercising delegated power and the Minister’s authority.
- 1.156 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add HMQ and Lenders’ Agent as additional named obligees, in the form attached as Exhibit 1 to Appendix C of Schedule 25 – Insurance and Performance Security.
- 1.157 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add HMQ and Lenders’ Agent as additional named obligees, in the form attached as Exhibit 1 to Appendix B of Schedule 25 – Insurance and Performance Security.
- 1.158 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.159 “**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).
- 1.160 “**Notice**” has the meaning given in Section 49.1(a).
- 1.161 “**Outline Commissioning Program**” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 - Outline Commissioning Program.
- 1.162 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.163 “**Party**” means either HMQ or Project Co, and “**Parties**” means both HMQ and Project Co.

- 1.164 **“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 equal to 2% over the rate of interest per annum quoted by the Bank of Nova Scotia 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.
- 1.165 **“Performance Bond”** means, collectively, the Performance Bond and the Multiple Obligee Rider to Performance Bond in the form attached as Appendix B to Schedule 25 – Insurance and Performance Security.
- 1.166 **“Performance Guarantee of Construction Guarantor”** means the performance guarantee to be entered into between HMQ and Construction Guarantor in the form set out in Schedule 12 – Performance Guarantee of Construction Guarantor.
- 1.167 **“Permits, Licences, Approvals and Agreements”** means the HMQ Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.168 **“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 the Project Co Parties 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 HMQ in respect of the Project.
- 1.169 **“Product”** means or **“Products”** means 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.
- 1.170 **“Prohibited Act”** has the meaning given in Section 48.1(a).
- 1.171 **“Project”** has the meaning given in Recital A.
- 1.172 **“Project Agreement”** has the meaning given in Recital B.
- 1.173 **“Project Co”** means AirLINX Transit Partners Inc.
- 1.174 **“Project Co Commissioning”** means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate in accordance with the Final Commissioning Program.
- 1.175 **“Project Co Conditions”** has the meaning given in Section 2.6.
- 1.176 **“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 Design and Construction Works, excluding a default by the Construction Guarantor under the guarantee of the Construction Guarantor, the form of which is attached to this Project Agreement as Schedule 12.

- 1.177 **“Project Co Delay”** has the meaning given in Section 13.4A(b).
- 1.178 **“Project Co Delay Notice”** has the meaning given in Section 13.4A(b).
- 1.179 **“Project Co Event of Default”** has the meaning given in Section 34.1(a).
- 1.180 **“Project Co Fee”** means a fixed fee payable to Project Co included in the Cost of the Work.
- 1.181 **“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.
- 1.182 **“Project Co Permits, Licences, Approvals and Agreements”** means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from any third parties (including all Development Approvals and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement other than any HMQ Permits, Licences, Approvals and Agreements and including those Project Co Permits, Licences, Approvals and Agreements which are the responsibility of Project Co to obtain as set out in the Output Specifications.
- 1.183 **“Project Co Proposal Extracts”** means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.184 **“Project Co Representative”** means the person designated as such by Project Co on or prior to the date of the Project Agreement and any permitted replacement.
- 1.185 **“Project Co Variation Notice”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.186 **“Project Data”** means:

- (a) all Design Data;
- (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Works; and
- (c) 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.

- 1.187 **“Project Debt”** means the principal amount issued and secured by the Lending Agreements.
- 1.188 **“Project Debt Interest Cost”** means the budgeted amount of aggregate interest charges in respect of the Project Debt used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.189 **“Project Documents”** means the Implementing Agreements and the Lending Agreements.
- 1.190 **“Proposal”** has the meaning given in the Request for Proposals.
- 1.191 **“Proprietor”** has the meaning given in Section 40.6(a).
- 1.192 **“Province”** means Her Majesty the Queen in Right of Ontario.
- 1.193 **“Quality Plans”** has the meaning given in Section 15.1(a).
- 1.194 **“Railway Specific Change in Law”** means any Change in Law which principally affects or principally relates only to the provision or operation of railways.
- 1.195 **“Record Documents”** means a collection of construction documents, including Shop Drawings, Product data sheets, reports, operation and maintenance information, as well as a revised set of the Contract Documents, recording the actual placement, configuration and nature of the various Products used in the construction of the Works. Record Documents shall include, where available, the Environmental Reports, pre-start health and safety review reports, and shall include in an electronic format system acceptable to HMQ, As-Built Drawings on diskette or recordable CD, maintenance and operating instructions manual, 6 sets of prints of record drawings and miscellaneous closeout submittals required by the Contract Documents.
- 1.196 **“Recoverable Tax”** has the meaning given in Section 4.18(c).
- 1.197 **“Recovery Amount”** has the meaning given in Section 44.3(g).

- 1.198 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Railway Specific Change in Law.
- 1.199 “**Relief Event**” has the meaning given in Section 32.1(a).
- 1.200 “**Request for Payment Approval**” has the meaning given in Section 3.2(d) of the Project Agreement.
- 1.201 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on March 18, 2011.
- 1.202 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
  - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
  - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
  - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
  - (e) is subject to a material claim of HMQ or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in HMQ’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
  - (f) has a material interest in the production of tobacco products.
- 1.203 “**Review Procedure**” means the procedure set out in Schedule 10 - Review Procedure.
- 1.204 “**Schedule Cushion**” means a schedule contingency added to the last activity on the critical path of the Works Schedule and consisting of 30 days duration. The Schedule Cushion shall be included in the Works Schedule and, for greater certainty, the Schedule

Cushion shall not extend the Contract Time. HMQ has ownership of the Schedule Cushion and can elect to use it at any time in respect of an HMQ initiated Variation, or upon the occurrence of a Delay Event which would otherwise grant to Project Co an extension of the Contract Time, provided any portion of the Schedule Cushion which has not been used by HMQ prior to the Substantial Completion Date will be given to Project Co. Use of the Schedule Cushion by HMQ shall not result in any right of Project Co to a claim for an increase in the Cost of the Financing.

- 1.205 “**Scheduled Final Completion Date**” means the last date for the completion of Minor Deficiencies pursuant to the Minor Deficiencies List.
- 1.206 “**Scheduled Substantial Completion Date**” means July 31, 2014, as such date may be extended pursuant to Section 30 of the Project Agreement.
- 1.207 “**Security**” means the Bonds and the Insurance.
- 1.208 “**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.
- 1.209 “**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.
- 1.210 “**Shop Drawings**” or “**shop drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures, samples, Product data, and other data which Project Co provides to illustrate details of a portion of the Works.
- 1.211 “**Site**” means:
- (a) the ARL Lands and the Lay Down Areas; and
  - (b) those other lands on which the ARL Spur Line and ARL T1 Station will be constructed by Project Co and operated by Metrolinx, as more particularly described in Schedule 16 – Legal Description of Site and Title Encumbrances.

For greater certainty, until the completion of the HMQ Enabling Works as set out in Section 6.1 of Part 1 of the Output Specifications (Schedule 15-2), the Site shall not include those locations specified in that Section 6.1 except to the extent authorized by HMQ in its Sole Discretion.

- 1.212 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.

- 1.213 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by HMQ to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the cost, or materially hinder, Project Co in the performance of the Works.
- 1.214 “**Sole Discretion**” has the meaning given in Section 1.1(e).
- 1.215 “**Specifications**” means that portion of the Contract Documents, wherever located and whenever issued, consisting of written requirements and standards for Products, systems, workmanship and the services necessary for the performance of the Works.
- 1.216 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.217 “**Start-Up Meeting**” has the meaning given in Section 11.5(a).
- 1.218 “**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.
- 1.219 “**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.
- 1.220 “**Submission Deadline**” has the meaning given in the Request for Proposals.
- 1.221 “**Substantial Completion**” means the point at which the ARL Spur Line and ARL T1 Station has been completed in accordance with the Project Agreement; a certificate of substantial performance of the Works is published pursuant to Section 32(1) of the *Construction Lien Act* (Ontario); and all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.222 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.223 “**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.
- 1.224 “**Substantial Completion Holdback**” means the holdback pursuant to Section 3 of Schedule 20 – Payments and Holdbacks.
- 1.225 “**Substantial Completion Holdback Payment Date**” means the date for payment of the Substantial Completion Holdback pursuant to Schedule 20 – Payments and Holdbacks.



- 1.226 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b).
- 1.227 “**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) Base Progress Payments, if any, paid, payable, or which will become payable by HMQ in respect of Works performed in accordance with the terms of the Project Agreement up to the end of the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date;
  - (b) all Additional HMQ Payments (including any payments pursuant to Section 8.5 of Schedule 4 – Lenders’ Direct Agreement) paid, payable or which will become payable, by HMQ in respect of Works performed in accordance with the Project Agreement on or before the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date;
  - (c) the Certified Cost to Complete;
  - (d) the HMQ Holdback as at the Substantial Completion Payment Date; and
  - (e) any Legislative Holdback required to be maintained by HMQ as at the Substantial Completion Payment Date.
- 1.228 “**Substantial Completion Payment Date**” means the 10<sup>th</sup> Business Day after the Substantial Completion Date.
- 1.229 “**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.
- 1.230 “**Surety**” means the person issuing the Bonds.
- 1.231 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the HMQ Taxes.
- 1.232 “**Technical Reports**” means the Environmental Reports and the Geotechnical Reports.
- 1.233 “**Termination Date**” means the date on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.234 “**Third Party Beneficiaries**” has the meaning given in Section 51.17(a)(i).

- 1.235 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by HMQ and reasonably required in connection with the development of the ARL Spur Line and ARL Spur T1 Station and the Works.
- 1.236 “**USRC**” means that portion of railway track owned by Metrolinx known as the Union Station Rail Corridor that extends from Union Station, Toronto, Ontario westerly to the CN Track.
- 1.237 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, heat, and steam.
- 1.238 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities.
- 1.239 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.240 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.241 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.242 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.243 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.244 “**Warranty Letter of Credit**” has the meaning given in Section 11.31(a) of the Project Agreement.
- 1.245 “**Warranty Period**” has the meaning given in Section 11.29(c).
- 1.246 “**Works**” means the design, construction, installation, testing, commissioning and completion of the ARL Spur Line and ARL T1 Station, including rectification of any Minor Deficiencies, and the performance of all other obligations of Project Co under the Project Agreement.
- 1.247 “**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 ARL Spur Line and ARL T1 Station 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.
- 1.248 “**Works Committee**” has the meaning given in Section 14.1(a).
- 1.249 “**Works Milestone**” means any milestone identified as a “**Works Milestone**” in the Works Schedule and, for clarity, includes the applicable date for achieving such milestone (as such date may be extended pursuant to Section 30 of the Project Agreement); and “**Works Milestones**” means, collectively, all of such “**Works Milestones**”.
- 1.250 “**Works Report**” has the meaning given in Section 13.6.
- 1.251 “**Works Schedule**” means has the meaning given in Section 13.2(a).
- 1.252 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.253 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
- 2. Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other

- divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the

- same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of HMQ or any HMQ Party shall be construed having regard to the interactive nature of the activities of HMQ, the HMQ Parties 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 HMQ's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
  - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are

- followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or HMQ they shall be construed and interpreted as synonymous and to read “Project Co shall” or “HMQ shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to HMQ shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the railway or public transportation sectors 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:
- Adjusted amount or sum = Amount or sum  $\times \frac{CPI_n}{CPI_0}$
- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in the Project Agreement, shall be interpreted by taking into consideration Project Co’s and

any Project Co Party's experience and the investigations, inspections and examinations of the Background Information and of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence, and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence, in each case in accordance with Good Industry Practice.

APPENDIX “1”

PERMITS, LICENCES, APPROVALS AND AGREEMENTS

HMQ AND PROJECT CO RESPONSIBILITY TABLE

Note: Where both HMQ and Project Co are identified as having the same responsibility, please refer to the “Comment” column for an explanation.

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
TRCA Permit and Approvals for Work in Mimico Creek flood plain			X	X	
GTAA (Construction Control Office) Facility Alteration Permits including but not limited to associated crane permits, shutdown requests, etc.			X	X	Required for all work on GTAA Property in accordance with GTAA Protocols and Procedures
MOE Permit to Take Water			X	X	As required by construction activities
MOE Certificate of Approval			X	X	Required for the installation of the generator



	Municipal Sewer use Permit			X	X	As required by construction activities
	Municipal and Provincial Road Occupancy/Road Cut/Road Works Permits			X	X	In accordance with local municipal and Provincial requirements
	City of Mississauga Building Permit			X	X	As required by the construction of the emergency stair tower at Northwest Drive on City of Mississauga lands

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**SCHEDULE 2**

**COMPLETION DOCUMENTS**

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

**1. DOCUMENTS TO BE DELIVERED BY PROJECT CO**

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

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Lenders' Direct Agreement;
- 1.3 an original of the Independent Certifier Agreement;
- 1.4 an original of the Insurance Trust Agreement;
- 1.5 an original notice of appointment of the Project Co Representative;
- 1.6 the Lending Agreements;
- 1.7 the Design and Construction Contract;
- 1.8 an original of the Performance Guarantee of Construction Guarantor;
- 1.9 an original of the Assignable Subcontract Agreement for Design and Construction Contract;
- 1.10 those Assignable Subcontract Agreements designated by HMQ;
- 1.11 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor in accordance with this Project Agreement;
- 1.12 an original of the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;
- 1.13 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.14 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;

- 1.15 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.16 an original of the opinion from counsel to Project Co, the Construction Contractor, the Construction Guarantor, and such other Project Co Parties as HMQ may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to HMQ and its counsel;
- 1.17 an original of the Bonds required in accordance with this Project Agreement or as HMQ may direct in accordance with the Insurance Trust Agreement; and
- 1.18 such other documents as the parties may agree, each acting reasonably.

## **2. DOCUMENTS TO BE DELIVERED BY HMQ**

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

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Lenders' Direct Agreement;
- 2.3 an original of the Independent Certifier Agreement;
- 2.4 an original of the Insurance Trust Agreement;
- 2.5 an original of the Assignable Subcontract Agreement for Design and Construction Contract;
- 2.6 an original notice of appointment of the HMQ Representative;
- 2.7 a certificate of an officer of IO and a declaration of management signed by an officer of IO substantially in the forms attached as Appendix D and Appendix E respectively to this Schedule 2;
- 2.8 a certificate of an officer of Metrolinx and a declaration of management signed by an officer of Metrolinx substantially in the forms attached as Appendix D and Appendix E respectively to this Schedule 2;
- 2.9 a reliance letter from Thurber Engineering Ltd. in respect of those Geotechnical Reports prepared by Thurber Engineering Ltd.;
- 2.10 a reliance letter from Ecoplans Limited in respect of the those Environmental Reports prepared by Ecoplans Limited;
- 2.11 a reliance letter from MMM Group Limited in respect of the project Survey Data; and

2.12 such other documents as the parties may agree, each acting reasonably.

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**APPENDIX A**

**FORM OF UNDERTAKING AND ACKNOWLEDGEMENT**

**TO:** **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16. (“**HMQ**”)

**RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the \_\_\_\_ day of December, 2011 between HMQ and AirLINX Transit Partners Inc. (“**Project Co**”)

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1. The undersigned acknowledges that:
  - (a) The Project will proceed as an alternative financing and procurement 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 MTO or HMQ 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.

**[EXECUTION PAGE IMMEDIATELY FOLLOWS]**

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**AIRLIX TRANSIT PARTNERS INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR UNDERTAKING AND ACKNOWLEDGEMENT]**

APPENDIX B

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

Certificate of an Officer of

[•]

(the "Corporation")

**TO:** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16.

**AND TO:** BORDEN LADNER GERVAIS LLP

**AND TO:** MCMILLAN LLP

**AND TO:** NATIONAL BANK OF CANADA

**AND TO:** MCCARTHY TÉTRAULT LLP

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

1. Constatting Documents

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

- (d) Attached hereto as **Schedule "C"** is a true and complete copy of a unanimous shareholders' agreement between the shareholders of the Corporation and the Corporation (the "**Unanimous Shareholders' Agreement**") executed on or before the date hereof. The Unanimous Shareholders' Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [•] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [**Business Corporations Act (Ontario) (the "Act")**], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
- (i) restrict or limit the powers of the Corporation to enter into:
- (1) a certain project agreement with HMQ made as of [•], 201[•] (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which the



Corporation will design, build and finance the ARL Spur Line and ARL T1 Station;

- (2) a lenders' direct agreement between the Corporation, HMQ and the Lenders' Agent;
- (3) a design and construction contract between the Corporation and AirLINX Transit Partners JV (the "**Construction Contractor**");
- (4) an insurance trust agreement between the Corporation, HMQ, the Lenders' Agent and Computershare Trust Company of Canada;
- (5) **[NTD: List other documents delivered at Financial Close.]**,

(collectively, the "**Documents**"); or

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

## 2. Resolutions

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

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

**3. No Breach or Default**

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

**4. Specimen Signatures**

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

<b>NAME</b>	<b>POSITION</b>	<b>SIGNATURE</b>

**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:

<b>ISSUED SHARES</b>	<b>REGISTERED OWNER</b>
----------------------	-------------------------

Attached hereto as **Schedule "E"** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation)

securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201[•].

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Name:

Title:

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**APPENDIX C**

**FORM OF PROJECT CO/PROJECT CO PARTY OPINION**

**[INSERT DATE]**

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

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

Borden Ladner Gervais LLP  
Scotia Plaza, 40 King Street West  
Toronto, Ontario M5H 3Y4

Dear Sirs/Mesdames:

**Re: ARL Spur Project**

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We have acted as counsel to AirLINX Transit Partners Inc. ("**Project Co**"), AirLINX Transit Partners JV (the "**Construction Contractor**") in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build and finance agreement for the new ARL Spur Line and ARL T1 Station in [Mississauga], Ontario. [NTD: **Additional parties to be added depending on consortium structure and/or the financing package.**]

This opinion is being delivered to Ontario Infrastructure and Lands Corporation, Metrolinx and their counsel pursuant to Section 1 of Schedule 2 to the project agreement made as of [•], 201[•] between HMQ 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 [•], 201[•]):

1. the Project Agreement; and
2. the following project documents (collectively, the "**Implementation Documents**"):
  - (a) the Design and Construction Contract;
  - (b) the Lenders' Direct Agreement;
  - (c) the Assignable Subcontract Agreement for Design and Construction Contract;

- (d) the Assignable Subcontract Agreements;
- (e) the Lending Agreements
- (f) the Insurance Trust Agreement; and
- (g) the Performance Guarantee of Construction Guarantor.

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

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

We do not act as corporate counsel to **[Project Co 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, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule "B".

In connection with the opinions set forth in paragraphs **[5, 8, 11, 17 and 20]** below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of **[•]** dated **[•]**, 201**[•]** (the "**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 HMQ for which it would be contrary to public policy to require Project Co to indemnify HMQ or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

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

Yours very truly,

**[INSERT NAME OF LAW FIRM]**

APPENDIX D

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

**TO:** AIRLINX TRANSIT PARTNERS INC.

**AND TO:** MCMILLAN LLP

**AND TO:** NATIONAL BANK OF CANADA

**AND TO:** MCCARTHY TÉTRAULT LLP

**RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [•] day of [•], 201[•] between **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”), and AirLINX Transit Partners Inc. (“**Project Co**”)

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

1. Attached hereto as **Schedule “A”** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects assigned to the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “**Execution Resolutions**”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule “B”** is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the designated proponent for the ARL Spur Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. 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 Contracts Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Project (as defined in the Project Agreement) on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

<u>Name</u>	<u>Position</u>	<u>Signature</u>
[•]	_____	_____
[•]	_____	_____
[•]	_____	_____
[•]	_____	_____

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201[•].

\_\_\_\_\_  
Name:  
Title:

APPENDIX E

FORM OF DECLARATION OF MANAGEMENT

[ONTARIO INFRASTRUCTURE AND LANDS CORPORATION / METROLINX]

(“the Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”), and AirLINX Transit Partners Inc. propose to enter into a Project Agreement relating to the ARL Spur Project in Mississauga, Ontario (the “**ARL Spur Project**”);

AND WHEREAS the Corporation will from time to time enter into agreements for the design and construction of the ARL Spur 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 ARL Spur Project (collectively, “**Contract Documents**”);

**NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:**

1. by resolution of the board of directors of the Corporation passed on [•], the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Contract 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 Contract Documents;
2. the Corporation’s management may execute and deliver the Contract Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Contract Documents from time to time (collectively, together with the Contract 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 Contract Documents to be executed and delivered by the Corporation in connection with the ARL Spur 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 \_\_\_\_\_, 201[•].

\_\_\_\_\_  
Name:  
Title:

TOR01: 4579060: v15

**SCHEDULE 3  
DESIGN AND CONSTRUCTION CONTRACT**

**THIS DESIGN AND CONSTRUCTION CONTRACT** is made as of the 15<sup>th</sup> day of December, 2011.

**BETWEEN:**

**AIRLIX TRANSIT PARTNERS INC.**, a corporation incorporated under the laws of Ontario

(“**Project Co**”)

- and -

**AIRLIX TRANSIT PARTNERS JV**, an unincorporated joint venture between **AECON CONSTRUCTION AND MATERIALS LIMITED** and **DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

(the “**Construction Contractor**”)

**WHEREAS:**

- A. Pursuant to a project agreement dated as of the 15<sup>th</sup> day of December, 2011 between Project Co and HMQ (such agreement, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, being hereinafter called the “**Project Agreement**”), Project Co has agreed to perform the Design and Construction Work.
- B. Pursuant to the Project Agreement, Project Co has agreed to enter into this Design and Construction Contract with the Construction Contractor, pursuant to which the Construction Contractor has agreed to perform the Design and Construction Work.

**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 Design and Construction Contract shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement, applied *mutatis mutandis* and unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Project Agreement. For greater certainty, the Definitions and Interpretation shall be read or construed so as to conform to Sections 1.1(b) and (c) below.

- (b) The provisions of the Project Agreement relating to the Design and Construction Work (as set out in the definition of “**Design and Construction Work**”) are incorporated by reference *mutatis mutandis* into this Design and Construction Contract. In the event of any conflict or inconsistency between the provisions of this Design and Construction Contract and the Project Agreement, the provisions of this Design and Construction Contract shall govern and prevail. For greater certainty, the provisions of this Design and Construction Contract relating to payment shall be interpreted and operate independently from the comparable provisions in the Project Agreement. Notwithstanding the foregoing, and for greater certainty, the Construction Contractor covenants and agrees to comply with the provisions of Section 8.1 (provided the term “Project Documents”, as used in Section 8.1, shall not include the Lending Agreements, Schedule 4 – Lenders’ Direct Agreement or Schedule 12 – Performance Guarantee of Construction Guarantor) and Section 8.2 (provided that the term “Implementing Agreements”, as used in Section 8.2, shall be read as “sub-subcontracts”). For further certainty, Section 11.29, Section 11.30, Section 16.5(a), Article 26, Article 37, Article 39, Sections 47.3(a) and (b), Section 47.4 and Schedules 27 and 33 of the Project Agreement and such provisions are hereby incorporated by reference *mutatis mutandis* into this Design and Construction Contract. Provided further that the term “Implementing Agreements” in Section 34.1(a)(xvi) shall be read as “Design and Construction Contract”.
- (c) Without limiting the application of Section 1.1(a) and notwithstanding Section 1.1(b), any definition or principle of interpretation set out in Schedule 1 to the Project Agreement, or any provision of any Contract Document (other than this Design and Construction Contract), to the contrary, the following provisions of the Project Agreement shall not apply to this Design and Construction Contract and the Construction Contractor shall have no obligation with respect thereto, whether related to performance, compliance, observance or otherwise:
- (i) Recitals
  - (ii) Article 2
  - (iii) Sections 4.2, 4.3, 4.4, and 4.9
  - (iv) Article 6
  - (v) Sections 8.3 and 8.4
  - (vi) Section 34.1(a)(iv)
  - (vii) Sections 47.3(c) and (d)
  - (viii) Article 49
  - (ix) Schedule 2 – Completion Documents



- (x) Schedule 4 – Lenders’ Direct Agreement
  - (xi) Schedule 5 – Assignable Subcontract Agreement for Design and Construction Contract
  - (xii) Schedule 12 – Performance Guarantee of Construction Guarantor
  - (xiii) Schedule 20 – Payments and Holdbacks
  - (xiv) Schedule 24 – Financial Model
  - (xv) Schedule 31 – Project Co Information.
- (d) Where used herein, the phrase “the Project Agreement applied *mutatis mutandis*”, “incorporated by reference *mutatis mutandis*” and derivatives thereof, means that the applicable provisions of the Project Agreement shall be read and construed with all appropriate changes, including substituting references in the Project Agreement, where the context permits, as follows:
- (i) HMQ with Project Co, except for those references in Sections 10.1(c), 50.1 and 51.17 of the Project Agreement, and Section 5.7(1) of Schedule 33 - Transfer of Metrolinx Obligations to the GTAA onto Project Co, in respect of which, the term “HMQ” shall remain “HMQ”;
  - (ii) Project Co with the Construction Contractor; and
  - (iii) the Project Agreement with the Design and Construction Contract.

## **2. CONSTRUCTION WORK**

### **2.1 Design and Construction Work**

- (a) Subject to the provisions of Article 1 and the provisions of this Design and Construction Contract, the Construction Contractor shall perform all of the Design and Construction Work in compliance with this Design and Construction Contract and in such a manner so as not to cause Project Co to be in breach of its obligations to HMQ pursuant to the Project Agreement in respect of the Design and Construction Work.
- (b) For greater certainty, the Construction Contractor shall not be obligated by this Design and Construction Contract for any covenant, agreement, undertaking or obligation of Project Co related to the Financing or the Cost of the Financing, including any obligations of Project Co under Section 8.4(a) of the Project Agreement, each of which are hereby expressly excluded from the scope of this Design and Construction Contract.

### **3. GUARANTEED PRICE AND ADJUSTMENTS**

#### **3.1 Guaranteed Price and Adjustments**

- (a) The Guaranteed Price hereunder, excluding HST, shall be the Guaranteed Price under the Project Agreement less the Cost of the Financing as set out in Schedule 24 to the Project Agreement.
- (b) The Guaranteed Price hereunder will not be subject to adjustment despite changes in the Design and Construction Work, unless such changes in the Design and Construction Work constitute a Variation. The parties further agree that the Guaranteed Price hereunder will only be adjusted where the Contract Documents specifically and expressly refer to an adjustment to the Guaranteed Price hereunder, and no claim for an adjustment to the Guaranteed Price hereunder on any legal or equitable basis outside of this specific and express right to an adjustment of the Guaranteed Price hereunder set out in the Contract Documents will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price hereunder must be provided for in a Variation under Schedule 22 – Variation Procedure of the Project Agreement, which Schedule has been incorporated herein pursuant to Section 1.1(b) hereof.

### **4. PAYMENTS**

#### **4.1 Base Progress Payments, Additional HMQ Payments and Other Payments**

All payments required to be made by Project Co to the Construction Contractor hereunder, including Base Progress Payments, Additional HMQ Payments, the Certified Cost to Complete, the Substantial Completion Holdback, the HMQ Holdback and any Legislative Holdbacks with respect thereto, shall be paid by Project Co to the Construction Contractor, together with applicable HST, in accordance with the provisions of Appendix 1 to this Design and Construction Contract and the applicable provisions of the Project Agreement applied *mutatis mutandis*. All provisions in the Project Agreement respecting such payments, including provisions with respect to the calculation, determination and payment thereof and the set-off, withholding and deduction therefrom, shall apply *mutatis mutandis* to this Design and Construction Contract with the intent that payment of such amounts under the Project Agreement shall be deemed to be full satisfaction of any corresponding payment obligations to the Construction Contractor under this Design and Construction Contract.

#### **4.2 HST**

All payments to be made by Project Co to the Construction Contractor shall also include applicable HST.

**4.3 No Other Entitlement**

The Construction Contractor shall not be entitled to any payments or compensation under or in connection with this Design and Construction Contract, except for payments made under Section 4.1.

**5. VARIATIONS**

The Design and Construction Work, the Guaranteed Price hereunder and the Contract Time, as such terms are applied and interpreted for the purposes of this Design and Construction Contract, are subject to change, adjustment or variation only in accordance with the provisions of the Project Agreement. For greater certainty, the Construction Contractor shall not be entitled to any adjustment or variation to the Design and Construction Work, the Guaranteed Price hereunder or the Contract Time except if and to the extent allowed to Project Co pursuant to the provisions of the Project Agreement.

**6. INDEPENDENT CERTIFIER**

The Construction Contractor acknowledges the appointment and role of the Independent Certifier pursuant to the Project Agreement and agrees to be bound by the decisions, directions and instructions of the Independent Certifier pursuant to those provisions of the Project Agreement incorporated herein, as such decisions, directions and instructions apply to the performance of the Design and Construction Work by the Construction Contractor.

**7. CROSS DEFAULT**

A Project Co Construction Event of Default shall constitute a default by the Construction Contractor under the Design and Construction Contract, provided that, for greater certainty, if the Construction Contractor has received a copy of the notice of default provided to Project Co in accordance with Article 49 of the Project Agreement, the Construction Contractor shall not be entitled to any notice of or time period to remedy such Project Co Construction Event of Default.

**8. LIMITS ON LIABILITY**

For greater certainty, the limits on liability set out in Article 45 of the Project Agreement shall apply *mutatis mutandis* to this Design and Construction Contract.

For greater certainty, the obligations and limits of liability in favour of HMQ, the GTAA and the GTAA Parties (as defined in Schedule 33) pursuant to Section 5.7(1) of Schedule 33 - Transfer of Metrolinx Obligations to the GTAA onto Project Co shall apply *mutatis mutandis* to this Design and Construction Contract.

**9. BONDS**

Construction Contractor shall obtain and deliver to Project Co the Bonds on or before the Financial Close Target Date and shall provide satisfactory evidence with respect thereto

to Project Co on or before the Financial Close Target Date. Each Bond shall be properly executed by a Surety or by an agent or an attorney in fact for the Surety, in which latter case, Construction Contractor is required to submit with such Bond a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to Project Co to evidence the authority of the agent or attorney in fact.

## **10. GENERAL**

### **10.1 Notices to Parties**

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

If to the Construction Contractor:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

and:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

and:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

## 10.2 Notice to Independent Certifier

In addition to the notice requirements set out in Section 10.1, where any Notice is to be provided or submitted to the Independent Certifier, it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

[REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

## 10.3 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10.3.

## 10.4 Change of Address

Either Party to this Design and Construction Contract may, from time to time, change any of its contact information set forth in Section 10.1 or 10.2 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.

## 10.5 Deemed Receipt of Notices

- (a) Subject to Sections 10.5(b), 10.5(c) and 10.5(d):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (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.

#### **10.6 Miscellaneous**

For greater certainty, and without limiting the application of the applicable sections of the Project Agreement which are applied to this Design and Construction Contract *mutatis mutandis*, as aforesaid, this Design and Construction Contract is to be governed and interpreted on a basis consistent with the provisions of Article 51 of the Project Agreement. Without limiting the generality of the foregoing:

- (a) the Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Design and Construction Contract (and without limiting the foregoing, the Construction Contractor will at any time, and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by Project Co in order to cure any defect in the execution and/or delivery of this Design and Construction Contract); and
- (b) this Design and Construction Contract shall enure to the benefit of the Parties hereto and their respective permitted successors and assigns and be binding upon the parties hereto and their respective successors and assigns.

#### **11. CONTRACT CANCELLATION FEE**

The Construction Contractor acknowledges and agrees that there will be no cost associated with the cancellation of this Design and Construction Contract for the purposes of the calculation of the Default Termination Payment and the Non-Default Termination Sum under the provisions of Schedule 23 – Compensation on Termination of the Project Agreement, other than cancellation charges and other costs associated with the termination of any commitments relating to the Design and Construction Work under this Design and Construction Contract that the Construction Contractor makes, enters into or incurs in respect of any such work and that are otherwise payable pursuant to the provisions of Schedule 23 – Compensation on Termination of the Project Agreement.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the Parties have executed this Design and Construction Contract as of the date first above written.

**AIRLINX TRANSIT PARTNERS INC.**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

**[EXECUTION PAGE FOR DESIGN AND CONSTRUCTION CONTRACT]**

I/We have authority to bind the corporation

**AIRLIX TRANSIT PARTNERS JV, AN  
UNINCORPORATED JOINT VENTURE  
BETWEEN AECON CONSTRUCTION AND  
MATERIALS LIMITED AND DUFFERIN  
CONSTRUCTION COMPANY, A DIVISION  
OF HOLCIM (CANADA) INC. BY:**

**AECON CONSTRUCTION AND  
MATERIALS LIMITED**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**DUFFERIN CONSTRUCTION COMPANY,  
A DIVISION OF HOLCIM (CANADA) INC.**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR DESIGN AND CONSTRUCTION CONTRACT]**



**APPENDIX 1 TO SCHEDULE 3  
PAYMENTS AND HOLDBACKS**

**1. APPLICATIONS FOR PAYMENT**

- 1.1 Applications for payment on account may be made monthly as the Design and Construction Work progress.
- 1.2 Project Co and the Construction Contractor agree that for the purpose of calculating payment hereunder and for the amount of any Legislative Holdback under the Design and Construction Contract such determination shall be based only upon the Cost of the Works.
- 1.3 Application for payment by the Construction Contractor shall be dated the last day of the agreed monthly payment period and the amount claimed shall be based on the value, proportionate to the Cost of the Works, of the Design and Construction Work performed forming part of the Cost of the Works including Products delivered to the Site at that date. The application for payment shall also include and separately state the value of the Design and Construction Work performed with respect to Variation Confirmations or Variation Directives the payment of which Project Co is responsible for and which are included within Additional HMQ Payments. Applications for payment shall be made to the Independent Certifier and to the Lenders' Consultant at the same time. The Lenders' Consultant shall be responsible for verifying the application for payment to the Lender.
- 1.4 The Construction Contractor shall submit to the Independent Certifier and the Lenders' Consultant, at least 14 days before the first application for payment, a schedule of values for the parts of the Design and Construction Work so as to facilitate a valuation of applications for payment. The schedule of values shall be made out in such form, broken down in such detail and supported by such evidence as Project Co and the Independent Certifier and the Lenders' Consultant may reasonably direct and when accepted by the Independent Certifier and the Lenders' Consultant and Project Co, shall be used as the basis for applications for payment, unless it is found to be in error.
- 1.5 Claims for Products delivered to the Site but not yet incorporated into the Design and Construction Work shall be supported by such evidence as the Independent Certifier may reasonably require to establish the value and delivery of the Products.
- 1.6 The Construction Contractor shall submit to Project Co, the Independent Certifier and the Lenders' Consultant a statement based on the schedule of values, a WSIB Certificate of Clearance, the updated Works Schedule provided under Section 26.3 of the Project Agreement and an updated cash flow with each application for payment.
- 1.7 With the second and all subsequent applications for payment, except the final payment and release of holdback applications, the Construction Contractor shall submit a Statutory Declaration on CCDC Form 9A.

**2. PROGRESS PAYMENTS**

- 2.1 The Independent Certifier will issue to Project Co, no later than 10 Business Days after the receipt of an application for payment from the Construction Contractor submitted in accordance with Section 1 of this Appendix 1, a certificate addressed to HMQ of the progress of the Design and Construction Work in relation to the schedule of values, a copy of which shall be provided to Project Co, the Construction Contractor and the Lenders' Consultant. Contemporaneously, the Independent Certifier will issue a certificate for payment to Project Co of Additional HMQ Payments payable by Project Co with respect to the application for payment from the Construction Contractor in the amount applied for or in such other amount as the Independent Certifier determines to be properly due. If the Independent Certifier requires amendments to the application, the Independent Certifier will promptly notify the Construction Contractor in writing giving reasons for the amendment. The Lenders' Consultant will be responsible, no later than 5 Business Days from receipt of the certificate of the progress of the Design and Construction Work in relation to the schedule of values from the Independent Certifier, for issuing certificates for payment to Lender and the Construction Contractor respecting Base Progress Payments. Project Co and the Independent Certifier shall not be responsible for any delay in issuing a certificate for payment in respect of or for payment of Base Progress Payments on account of the activities of the Lenders' Consultant and/or the Lender.
- 2.2 Payment to the Construction Contractor on account of Base Progress Payments and monthly progress payments with respect to Additional HMQ Payments shall be made no later than 10 Business Days after the date of a certificate for payment issued by the Lenders' Consultant or the Independent Certifier, as the case may be.
- 2.3 Applications for progress payments will continue to be provided to the Lenders' Consultant so long as any amount that has been held back by Project Co pursuant to the Design and Construction Contract for the Design and Construction Work completed prior to the Substantial Completion Date remains unpaid.
- 2.4 Notwithstanding the time periods provided regarding the approval and certification of payment by the Independent Certifier or the Lenders' Consultant in Section 2.1 of this Appendix 1 and for payment in Section 2.2 of this Appendix 1, respectively, the total period of time between receipt of the application for payment by the Construction Contractor and payment by Project Co shall be no more than 25 Business Days, except with respect to any amount held back from such payment by Project Co in accordance with the Design and Construction Contract.
- 2.5 Construction Liens**
1. Notwithstanding anything else in this Appendix 1 – Payments and Holdbacks, in the event a claim for a construction lien is registered against the Site arising from the performance of the Design and Construction Work, and unless the Construction Contractor makes alternative arrangements to bond or otherwise

secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, or Project Co receives any written notice of lien arising from the performance of the Design and Construction Work, Project Co shall be entitled to withhold such portion of any payment otherwise due to the Construction Contractor in an amount Project Co reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by Project Co in connection therewith, including such amount on account of costs of the lien claimant such that Project Co may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the *Construction Lien Act* (Ontario), until such time as such claim has been dealt with as provided below.

2. In the event that a written notice of a construction lien arising from the performance of the Design and Construction Work is received by Project Co, and unless the Construction Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ acting reasonably, the Construction Contractor shall, within 30 days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Lien Act* (Ontario).
3. If a construction lien arising from the performance of the Design and Construction Work is registered against the Site, and unless the Construction Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, the Construction Contractor shall, within 30 days, at its sole expense, vacate or discharge the lien from title to the Site. If the lien is merely vacated, the Construction Contractor shall, if requested, undertake Project Co's defence of any subsequent action commenced in respect of the lien at the Construction Contractor's expense.
4. If the Construction Contractor fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Design and Construction Work within the time prescribed above, and unless the Construction Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, Project Co shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by Project Co in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the Construction Contractor, and Project Co may deduct such amounts from the amounts otherwise due or owing to the Construction Contractor.
5. Without limiting any of the foregoing, the Construction Contractor shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the Design and Construction Work or any actions brought in

connection with any such liens, or in connection with any other claim or lawsuit brought against Project Co by any person that provided services or materials to the Site which constituted part of the Design and Construction Work.

6. The provisions of Sections 2.5.1 through 2.5.5 inclusive, of this Appendix 1, do not apply to construction liens (i) filed by the Construction Contractor which are claimed as a result of any default of Project Co to make payments to the Construction Contractor in accordance with the terms of the Design and Construction Contract or (ii) filed by any HMQ Party, including for greater certainty HMQ's own forces or HMQ's other contractors, which are claimed as a result of work in relation to the Project.

### **3. PAYMENT OF HOLDBACK UPON SUBSTANTIAL COMPLETION**

- 3.1 After the issuance of the Substantial Completion Certificate under Section 24.4(d) of the Project Agreement, the Construction Contractor shall:
  1. submit an application for payment of the holdback amount;
  2. submit a written request for release of holdback including a declaration that no written notices of lien arising from the performance of the Design and Construction Work have been received by it;
  3. submit a Statutory Declaration CCDC 9A; and
  4. submit an original WSIB Certificate of Clearance.
- 3.2 After the later of (i) the receipt of the documents set out in Section 3.1 of this Appendix 1, and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario), the Independent Certifier shall issue a certificate for payment of the holdback amount.
- 3.3 Prior to the date of the release of the holdback, the Construction Contractor shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.
- 3.4 Subject to the provisions of Section 2.5 of this Appendix 1 and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Design and Construction Work, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the holdback amount pursuant to Section 3.2 of this Appendix 1.

**4. COMPLETION**

4.1 The Construction Contractor shall provide As-Built Drawings and Specifications, Record Documents, spare parts and shop drawings as soon as possible and in any event within 30 days of the Substantial Completion Date.

**5. FINAL PAYMENT**

5.1 [Intentionally Deleted]

5.2 [Intentionally Deleted]

5.3 [Intentionally Deleted]

5.4 Subject to the other requirements of this Design and Construction Contract, the unpaid balance of the Guaranteed Price hereunder shall become payable to the Construction Contractor on the later of:

1. the 2<sup>nd</sup> Business Day following the expiration of all liens pursuant to the *Construction Lien Act* (Ontario); and
2. the 10<sup>th</sup> Business Day following the Final Completion Date,

subject to Project Co's right under the Design and Construction Contract to withhold payment from the unpaid balance of the Guaranteed Price hereunder including for any amounts required pursuant to Section 6 of this Appendix 1, and any sums required to satisfy any lien or trust claims arising from the Design and Construction Work.

**6. WITHHOLDING OF PAYMENT**

6.1 If because of climatic or other conditions reasonably beyond the control of the Construction Contractor, there are items of work that cannot be performed, payment in full for that portion of the Design and Construction Work which has been performed, as certified by the Independent Certifier, shall not be withheld or delayed by Project Co on account thereof, but Project Co may withhold, until the remaining portion of the Design and Construction Work is finished, only such amount that the Independent Certifier determines is sufficient and reasonable to cover the cost of performing such remaining Design and Construction Work.

**7. NON-CONFORMING WORKS**

7.1 No payment by Project Co under the Design and Construction Contract nor partial or entire use or occupancy of the Design and Construction Work by Project Co shall constitute an acceptance of any portion of the Design and Construction Work or Products which are not in accordance with the requirements of the Contract Documents.

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**SCHEDULE 4**

**LENDERS' DIRECT AGREEMENT**

**THIS LENDERS' DIRECT AGREEMENT** is made as of the 15<sup>th</sup> day of December, 2011.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”)

**AND:**

**NATIONAL BANK FINANCIAL INC.**, acting as agent for and on behalf of the Lenders

(the “**Lenders' Agent**”)

**AND:**

**AIRLIX TRANSIT PARTNERS INC.**, a corporation incorporated under the laws of Ontario

(“**Project Co**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. Under the Lending Agreements, the Financing is to be provided to Project Co by the Lenders to finance the payment of the Base Progress Payments to Project Co under the Project Agreement, conditional, among other things, on Project Co executing and delivering the Lending Agreements.
- C. The Lenders' Agent has agreed to enter into this Lenders' Direct Agreement with HMQ and Project Co in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement.
- D. With a view to ensuring that HMQ is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with HMQ throughout the duration of the Project Agreement.

- E. The Parties hereto agree that in relation to any defaults under the Lending Agreements and/or the Project Agreement and any enforcement action which either wishes to take under any security document entered into in support of the obligations of Project Co thereunder, their joint efforts and cooperation will be needed, together with such statutory approvals and consents as may then be required, given the nature of IO and Metrolinx as agents for Her Majesty The Queen in Right of Ontario.

**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 In this Lenders' Direct Agreement, all capitalized terms not otherwise defined in this Lenders' Direct Agreement shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) **“Appointed Representative”** means any of the following to the extent so identified in an Appointed Representative Notice:
  - (i) the Lenders' Agent, the Lenders or any Affiliate of either of them;
  - (ii) a receiver or receiver and manager or any permutation thereof of Project Co appointed under the Lending Agreements or appointed by a court of competent jurisdiction;
  - (iii) a Person directly or indirectly owned or controlled by the Lenders' Agent or the Lenders; or
  - (iv) any other Person approved by HMQ (such approval not to be unreasonably withheld or delayed).
- (b) **“Appointed Representative Notice”** has the meaning given to it in Section 7.2.
- (c) **“Article”** and **“Section”** mean and refer to the specified article and section or subsection of this Lenders' Direct Agreement.
- (d) **“Design and Construction Contract Assignment”** has the meaning given to it in Section 7.3.
- (e) **“Enforcement Action”** means any acceleration of amounts due and owing under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Lending Agreements.
- (f) **“Enforcement Event”** means an event of default under the Lending Agreements or any event which permits an Enforcement Action.

- (g) “**Enforcement Rights**” means the rights as against Project Co to enforce or terminate the Project Agreement under Article 25 therein.
- (h) “**Lenders**” means Canadian Imperial Bank of Commerce, National Bank of Canada, The Toronto-Dominion Bank and Laurentian Bank of Canada.
- (i) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (j) “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project by the Lenders and includes but is not limited to:
- [REDACTED]
- (k) “**Lien**” means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).
- (l) “**Notice Period**” means the period starting on the date of delivery of a Project Co Default Notice and ending 120 days later.
- (m) “**Party**” means any of HMQ, Project Co or the Lenders’ Agent, and “**Parties**” means all of HMQ, Project Co and the Lenders’ Agent.
- (n) “**Pre-Qualified Proponent**” means an entity listed in Appendix A to this Lenders’ Direct Agreement.
- (o) “**Project Agreement Assignment**” means an assignment of the Project Agreement by an Appointed Representative to a Replacement Project Co as contemplated in Section 7.3.
- (p) “**Project Co Default Notice**” has the meaning given to it in Section 6.1.
- (q) “**Project Co Event of Default**” means the occurrence of an event under the Project Agreement that upon the expiry of any cure periods provided for therein would entitle HMQ to terminate the Project Agreement.
- (r) “**Rectification Obligations**” has the meaning given in Section 7.3.
- (s) “**Replacement Design and Construction Contract**” has the meaning given to it in Section 7.3.
- (t) “**Replacement Construction Contractor**” means a replacement contractor under a Design and Construction Contract Assignment or a Replacement Design and Construction Contract entered into pursuant to Section 7.3 who must either be a contractor that is a Pre-Qualified Proponent or that is acceptable to HMQ, acting reasonably.
- (u) “**Replacement Project Agreement**” has the meaning given to it in Section 7.3.



- (v) **“Replacement Project Co”** means a replacement project company under a Project Agreement Assignment or a Replacement Project Agreement entered into pursuant to Section 7.3, that must either be (i) a project company that is a Pre-Qualified Proponent or a wholly-owned subsidiary of a Pre-Qualified Proponent (in which event the Pre-Qualified Proponent must be the Construction Guarantor under the Replacement Project Agreement) or (ii) a project company that is acceptable to HMQ, acting reasonably.
- (w) **“Response Period”** has the meaning given to it in Section 4.1(c).
- (x) **“Step-In Date”** means the date on which HMQ receives a Step-In Notice from the Lenders’ Agent.
- (y) **“Step-In Notice”** means the notice given by the Lenders’ Agent to HMQ pursuant to Section 7.1 stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (z) **“Step-In Period”** means the period from the Step-In Date up to and including the Step-Out Date.
- (aa) **“Step-Out Amount”** has the meaning given to it in Section 8.3.
- (bb) **“Step-Out Dates”** means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) and 6.3(b), as the case may be, and (ii) the date on which HMQ receives a Step-Out Notice.
- (cc) **“Step-Out Notice”** has the meaning given to it in Section 8.1.

## 1.2 Interpretation

- (a) The provisions of Sections 2.1 - 2.32, inclusive, of Schedule 1 of the Project Agreement are hereby incorporated in their entirety and all references in same to **“Project Agreement”** shall be read as **“Lenders’ Direct Agreement”**.
- (b) This Lenders’ Direct 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 Lenders’ Direct Agreement.

<b>Appendix No.</b>	<b>Description</b>
Appendix A	Pre-qualified Proponents

## 2. CONFLICT IN DOCUMENTS

- 2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lenders’ Direct Agreement and the Project Agreement, this Lenders’ Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of HMQ set out in this 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. Notwithstanding any provision of any other Implementing Agreement, including Section 2.5(a)(iv) of the Project Agreement, no review by HMQ of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by HMQ, and this Lenders' Direct Agreement and the Project Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

### **3. TERM**

- 3.1 This Lenders' Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to the Lenders' Agent or the Lenders under the Lending Agreements have been satisfied in full.
- 3.2 Promptly, and in no event more than 30 days following its occurrence, the Lenders' Agent shall provide notice to HMQ of the date referred to in Section 3.1.
- 3.3 HMQ hereby provides to the Lenders, the Lenders' Agent and Project Co and agrees to provide to Replacement Project Co, a non-exclusive license to have access to and to use the Site on the same terms and conditions as set out in Sections 16.1 and 16.6 of the Project Agreement.

### **4. AGREEMENTS AND SECURITY**

- 4.1 (a) Project Co and the Lenders' Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment:
- (i) is consistent in all material respects with the Financial Model;
  - (ii) does not increase the Cost of the Financing; and
  - (iii) does not increase the amount of any Compensation Payment, if and when payable, or costs of prepayment that were contained in the financing term sheet in the Proposal Submission,
- and shall provide prompt notice to HMQ of any amendments or modifications accompanied by a copy thereof.
- (b) Project Co and HMQ shall not amend or modify the Project Agreement or any Implementing Agreements to which Project Co or HMQ are parties, without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent (subject to Section 6.4 of this Lenders' Direct Agreement) shall not be withheld if the relevant amendment or modification does not:
- (i) adversely affect the ability of the Lenders' Agent or the Lenders to exercise its rights under the Lending Agreements;

- (ii) adversely affect the security of Lenders under the Lending Agreements; or
- (iii) increase the liability of the Lenders' Agent, the Lenders or Project Co under the relevant agreement.

The Lenders' Agent shall respond to any request for consent under this Section 4.1(b) within 15 days of receipt thereof, failing which the Lenders' Agent shall be deemed to have consented to the relevant amendment or modification.

- (c) Project Co and HMQ acknowledge and agree that they will not, without the consent of the Lenders' Agent proceed to execute or implement any Variation and HMQ acknowledges and agrees that it will not issue any Variation Directive, which, in either case, is in respect of a discretionary expansion of the construction scope of the Works initiated by HMQ and which would:
  - (i) materially alter the scope of the Works; or
  - (ii) materially impact financing of the Project or otherwise materially and adversely alter the risk profile of the Project,

provided the Parties further acknowledge and agree that where such Variation or Variation Directive (A) costs less than \$[REDACTED], or (B) when aggregated with all such other Variations and Variation Directives previously implemented, costs less than \$[REDACTED], such Variation or Variation Directive shall be deemed not to materially alter the scope of the Works or impact the financing of the Project or otherwise materially and adversely alter the risk profile of the Project. When the Lenders' Agent's approval in respect of a Variation or Variation Directive is required in accordance with this Section 4.1(c), the Lenders' Agent will respond to a written request within 10 Business Days ("Response Period") of receiving such request for its approval. If the Lenders' Agent intends not to approve the Variation or the Variation Directive, the Lenders' Agent will notify HMQ within the Response Period and will set out its concerns in such notification. If the Lenders' Agent's concerns can be addressed on a basis acceptable to HMQ and the Lenders' Agent, then HMQ may proceed with such Variation or Variation Directive and will concurrently implement or cause to be implemented such agreed-upon solution, including, as appropriate, by way of an amendment to the Variation or Variation Directive or by a related Variation or Variation Directive.

- 4.2 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.
- 4.3 The Lenders' Agent acknowledges having received a copy of each of the Implementing Agreements.
- 4.4 HMQ acknowledges having received a copy of each of the Lending Agreements entered into as at Financial Close and consents to the granting of security by Project Co over the Project Agreement and Implementing Agreements contained in the Lending Agreements.

- 4.5 Project Co and the Lenders' Agent acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario) none of Project Co, the Lenders' Agent or the Lenders shall, under the Project Agreement or any of the Implementing Agreements, acquire any interest in the Site or the Project (other than the licence to access the Site provided in Section 3.3 of this Lenders' Direct Agreement or in Section 16.1(a) of the Project Agreement) notwithstanding any provision therein to the contrary and that HMQ shall at all times retain the fee simple interest in and freehold title to the Site and the Project to be constructed on the Site under the Project Agreement.
- 4.6 Without limitation of any of their respective rights and remedies under the Implementing Agreements, Project Co and the Lenders' Agent acknowledge that nothing in this Lenders' Direct Agreement or any of the Implementing Agreements, including the Design and Construction Contract, shall limit or shall be construed as limiting any authority and responsibility of IO under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, of Metrolinx under the *Metrolinx Act, 2006* (Ontario) or, subject to Section 10.1(b) of the Project Agreement, any directions to IO or Metrolinx made by a Governmental Authority under Applicable Law, or from being in compliance with all Applicable Law.
- 4.7 The Parties agree that they will enter into the Insurance Trust Agreement contemporaneously with the execution of this Lenders' Direct Agreement.

## **5. ENFORCEMENT OF SECURITY BY AGENT**

- 5.1 The Lenders' Agent shall concurrently with notice to Project Co notify HMQ of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from the Lenders' Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders' Agent or the Lenders under the Lending Agreements or any notice from the Lenders' Agent to Project Co to demand repayment thereof.
- 5.2 The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Legislative Holdback to be maintained in respect of all Base Progress Payments. Project Co agrees that it shall, in respect of all Base Progress Payments, comply with Part IV of the *Construction Lien Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide HMQ 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 5.2 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 HMQ.
- 5.3 HMQ may conduct a subsearch of the Site at any time and from time to time and notify the Lenders' Agent and Project Co if any Lien has been registered against the Site arising from performance of the Works (save and except for any Liens in respect of work done

by contractors directly engaged by HMQ for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.17(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), and if such a Lien has been registered, Project Co shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged. The Lenders' Agent acknowledges and agrees with HMQ that neither the Lenders' Agent nor the Lenders shall be entitled to rely on HMQ to conduct a subsearch or on any subsearch result of HMQ and that the result of any such subsearch provided by HMQ is, subject to the obligations of Project Co and the Lenders' Agent hereunder, for information only.

- 5.4 The Lenders' Agent agrees to require, prior to the advance of any Financing, a certification from Project Co and the Construction Contractor that they have no notice of any claim for lien registered or which is proposed or threatened to be registered against the Works and if such certification cannot be delivered because a Lien has been registered against the Site arising from the performance of the Works (save and except for any Liens in respect of work done by contractors directly engaged by HMQ for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.17(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), the Lenders' Agent shall direct Project Co to proceed to immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged or to make alternative arrangements to bond or otherwise secure the amount of the Lien and costs associated therewith satisfactory to the Lenders' Agent, acting reasonably, and doing so shall be a condition precedent to the making of any advance of the Financing.

## **6. PROJECT CO EVENT OF DEFAULT**

- 6.1 Subject only to the rights expressly afforded to the Lenders' Agent in this Article 6, HMQ shall serve notice to the Lenders' Agent, with a copy to Project Co, of a Project Co Event of Default (the "**Project Co Default Notice**") contemporaneously with any notice delivered by HMQ to Project Co under the Project Agreement. Without limiting the rights and remedies of the Lenders' Agent hereunder and without prejudice to the Lenders' Agent's right to enforce the Lending Agreements against Project Co, upon the occurrence of a Project Co Event of Default, the Lenders' Agent shall forthwith serve notice of default on the Surety and make demand on the Surety under the Performance Bond if the Project Co Event of Default is also a default by the Construction Contractor of its obligations under the Design and Construction Contract (a "**Construction Event of Default**").
- 6.2 At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 6.3), HMQ shall not exercise any right it may have to terminate the Project Agreement or, except to the extent required to protect legal rights, comply with Applicable Law or preserve its rights to make a claim or recover under the Performance Bond, exercise any other rights or remedies for a Project Co Event of Default unless:

- (a) HMQ delivers to the Lenders' Agent a Project Co Default Notice setting out the nature of the alleged default in reasonable detail; and
  - (b) in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has not been cured by or on behalf of Appointed Representative within 30 days of the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is not diligently proceeding to cure the breach in accordance with Section 34.1(a) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date; or
  - (c) in the case of a Project Co Event of Default which is incapable of being cured, the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- 6.3 During the Step-In Period, HMQ shall not exercise any right it may have to terminate the Project Agreement or, except to the extent required to protect legal rights, comply with Applicable Law or preserve its right to make a claim or recover under the Performance Bond, exercise any other rights or remedies in respect of a Project Co Event of Default:
- (a) if, in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has been cured by or on behalf of Appointed Representative within 30 days of the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is diligently proceeding to cure the breach in accordance with Section 34.1(a) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date;
  - (b) if, in the case of a Project Co Event of Default which is either:
    - (i) not capable of being cured (which, by way of example, would include an event described in Section 34.1(a)(i) of the Project Agreement), or
    - (ii) capable of being cured in the determination of the Lenders' Agent (acting reasonably) only by assigning the Project Agreement to a Replacement Project Co or entering into a Replacement Project Agreement as provided under Section 7.3, a Project Agreement Assignment with a Replacement Project Co or a Replacement Project Agreement with a Replacement Project Co has been entered into in accordance with Section 7.3 within 120 days of the delivery of the Project Co Default Notice. HMQ and Appointed Representative may agree to extend such time period where Appointed Representative is proceeding diligently. In the case of either a Project Agreement Assignment or a Replacement Project Agreement having been entered into, the Works thereunder is to be completed on or before the date falling 180 days after the Longstop Date.

6.4 The Lenders' Agent will not take or consent to any action, including any action contemplated in Section 7.3 of this Lenders' Direct Agreement, or any other action otherwise permitted or contemplated in this Lenders' Direct Agreement, if such action would compromise the enforceability of the Security or HMQ's entitlement to claim or recover under the Security, unless the Lenders' Agent first obtains the prior approval of HMQ which may be given or withheld in HMQ's Sole Discretion. The Lenders' Agent hereby indemnifies and saves HMQ and its directors, officers, employees, agents and representatives harmless from and against any Direct Losses which may be brought against, suffered, sustained or incurred by any of them as a result of, in respect of, or arising out of any breach by the Lenders' Agent of the provisions of this Section 6.4, arising from the wilful misconduct or gross negligence of the Lenders' Agent.

## **7. LENDER'S STEP-IN RIGHTS**

7.1 Subject to Sections 6.2(b) and 7.2 and without prejudice to the Lenders' Agent's rights to enforce the Lending Agreements against Project Co, the Lenders' Agent may give HMQ a Step-In Notice at any time:

- (a) during which a Project Co Event of Default is subsisting (whether or not a Project Co Default Notice has been served);
- (b) during the Notice Period; or
- (c) during which an Enforcement Event is subsisting.

7.2 At the time the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to HMQ of the identity of its proposed Appointed Representative.

7.3 Subject to Section 6.3(a), upon issuance of a Step-In Notice, Appointed Representative shall cause Project Co to remedy the Project Co Event of Default and shall have the right for such purpose to enforce any of the Enforcement Rights including the right, subject to the prior approval of HMQ, acting reasonably, and subject to the terms and conditions of the Bonds to:

- (a) assign Project Co's interest in the Project Agreement and the other Implementing Agreements (excluding the Bonds) to a Replacement Project Co (the "**Project Agreement Assignment**"), subject to the agreement by the Replacement Project Co to assume the terms and conditions of the Project Agreement and the other Implementing Agreements; or
- (b) terminate the Project Agreement pursuant to the Enforcement Rights, and cause a replacement project agreement to be entered into with a Replacement Project Co (the "**Replacement Project Agreement**") on terms substantially similar to the Project Agreement; and

- (c) (i) assign the Construction Contractor’s interest in the Design and Construction Contract to a Replacement Construction Contractor (the “**Design and Construction Contract Assignment**”) subject to the agreement by the Replacement Construction Contractor to assume the terms and conditions of the Design and Construction Contract; or (ii) terminate the Design and Construction Contract and to enter into a replacement construction contract with a Replacement Construction Contractor (the “**Replacement Design and Construction Contract**”) on terms substantially similar to the Design and Construction Contract;

provided that in either case, the Replacement Project Co covenants in the Project Agreement Assignment or the Replacement Project Agreement, as applicable, to (i) remedy any curable breach of Project Co under the Project Agreement, whether in respect of payment or performance and whether arising prior to or during the Step-In Period, (ii) vacate any Liens from the Site arising from the performance of the Works, whether arising prior to or during the Step-In Period (other than in the circumstances set out in Section 6.3(b)(ii)), and in the case of items (i) and (ii), subject to and within the time period for curing Project Co Events of Default as set out in Section 6.3(a), and (iii) provide replacement or ensure continued maintenance of the Security under the Project Agreement (items (i), (ii) and (iii) of this Section 7.3 are collectively referred to as the “**Rectification Obligations**”). Upon any Project Agreement Assignment, the Project Agreement shall be deemed to be terminated on the date of such Project Agreement Assignment with respect to Project Co, and the provisions of Section 4.6 of Schedule 23 – Compensation on Termination, shall be deemed to apply as if compensation had been paid by HMQ pursuant to Section 2.1 of Schedule 23 – Compensation on Termination, and the Replacement Project Co shall have no liability for the non-performance of Project Co arising prior to the date of such Project Agreement Assignment, unless same is encompassed in the Rectification Obligations, provided the foregoing shall not limit the rights of HMQ to subsequently deduct from payments owing by HMQ under the Project Agreement those amounts which it would otherwise be entitled to deduct under the Project Agreement.

- 7.4 At the time of a Project Agreement Assignment or the entering into of a Replacement Project Agreement under Section 7.3, the Lenders’ Agent shall be required to cause the Replacement Project Co to enter into a construction contract, on terms substantially similar to the Design and Construction Contract and an assignable subcontract agreement, on terms substantially similar to the form of the Assignable Subcontract Agreement for Design and Construction Contract, and to make such other arrangements satisfactory to HMQ under which the Replacement Project Co stands in the place of Project Co under the Lending Agreements, the Project Agreement and the Implementing Agreements.
- 7.5 During the Step-In Period, HMQ shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Project Agreement. Project Co agrees to be bound by all such dealings between HMQ and Appointed Representative to the same extent as if they had been between HMQ and Project Co.



7.6 For greater certainty, the Lenders' Agent acknowledges and agrees that its rights as Obligee under the Performance Bond shall be limited to the enforcement of the obligations of the Surety, as more particularly described in the Performance Bond, and shall be subject to the Lenders Agent's obligation as an Obligee to pay the Balance of the Design and Construction Contract Price. If the Lenders' Agent receives any benefit from the Surety under the Performance Bond and fails to complete or cause to have completed the obligations of the Construction Contractor under the Design and Construction Contract, the Lenders' Agent shall pay to HMQ an amount equal to the amount of the proceeds received by the Lenders' Agent from the Surety and not applied toward obtaining the completion of the unperformed obligations of the Construction Contractor under the Design and Construction Contract. For the purposes of this Section 7.6, the terms Obligee, Surety, and Balance of the Design and Construction Contract Price have the meanings given to them under the Performance Bonds.

## **8. STEP-OUT RIGHTS**

8.1 Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to HMQ to terminate the Step-In Period on the Step-Out Date.

8.2 On termination of the Step-In Period, where the Project Agreement has been assigned to the Replacement Project Co or a Replacement Project Agreement has been entered into as contemplated in Section 7.3, HMQ and Appointed Representative shall be released from any obligations to the other arising during the Step-In Period, except as may arise under Section 6.4, Section 7.6 or Section 8.6(iii).

8.3 On termination of the Step-In Period, if (i) the Project Co Event of Default has not been cured, or (ii) the Project Agreement has not been assigned to a Replacement Project Co or a Replacement Project Agreement has not been entered into and any outstanding Project Co Event of Default has not been cured, then HMQ shall confirm that, as consideration for the rights and benefits assigned to HMQ pursuant to Section 8.3(c) below, it shall pay to Project Co, an amount equal to the amount that would have been paid by HMQ upon termination of the Project Agreement pursuant to the provisions of Section 2.1 of Schedule 23 – Compensation on Termination (and calculated and payable in accordance therewith) as if the date of such confirmation were the Termination Date (the "**Step-Out Amount**") and upon such confirmation:

- (a) any rights and obligations between Appointed Representative on the one hand and HMQ on the other hand, arising during the Step-In Period, shall be mutually released, except as may arise under Section 6.4, Section 7.6 or Section 8.6(iii);
- (b) subject to payment of the Step-Out Amount by HMQ, HMQ shall have no further obligation to Appointed Representative or Project Co to pay the Substantial Completion Payment to the Lenders' Agent, the Lenders, Appointed Representative or Project Co on the achievement of Substantial Completion of the Works;

- (c) The Lenders' Agent shall permit HMQ thereupon to have the full benefit and entitlement to the Bonds, the Assignable Subcontract Agreement for Design and Construction Contract and the Assignable Subcontract Agreements without regard to any interest therein of the Lenders' Agent, the Lenders or Project Co, and the Lenders' Agent agrees that HMQ may thereafter proceed to enforce all of its rights under the Bonds, the Assignable Subcontract Agreement for Design and Construction Contract and/or the Assignable Subcontract Agreements without regard to any rights in favour of the Lenders' Agent, the Lenders or Project Co and the Lenders' Agent shall notify the Surety under the Performance Bond that HMQ is entitled to exercise all rights and take all benefits of the Obligee;
- (d) the provisions of Section 4.6(a) of Schedule 23 – Compensation on Termination shall, subject to payment of the Step-Out Amount by HMQ, be, subject to Section 8.5, deemed to apply as between Project Co and HMQ, *mutatis mutandis*, and the obligation to make Base Progress Payments shall devolve to and thereafter be assumed by HMQ; and
- (e) the provisions of Sections 4.3 to 4.8, inclusive, of the Project Agreement shall no longer apply.

If an Enforcement Event has not been cured on the termination of the Step-In Period as aforesaid, then HMQ may confirm that, as consideration for the rights and benefits assigned to HMQ pursuant to Section 8.3(c), it shall pay to Project Co, the Step-Out Amount, and the provisions of Sections 8.3(a), (b), (c), (d) and (e) above shall apply upon such confirmation. For greater certainty, nothing in this Section 8.3 shall affect the rights and obligations of the Construction Contractor under the Design and Construction Contract or the rights of the Surety under the Performance Bond.

Project Co hereby irrevocably directs payment of the Step-Out Amount to the Lenders' Agent or as the Lenders' Agent may direct as security for the Financing.

- 8.4 There will not be more than one Step-In Period following the issuance by HMQ of any one Project Co Default Notice.
- 8.5 HMQ acknowledges and agrees that if HMQ proceeds to exercise its rights as Obligee under the Performance Bond, unless HMQ has arranged for a replacement Financing through Project Co, a Replacement Project Co or a substitute project co, then HMQ shall be obligated to make the Base Progress Payments and to pay the applicable HST subject to and in accordance with the requirements of the Design and Construction Contract.
- 8.6 HMQ hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Assignable Subcontract Agreements except in accordance with the terms of the Assignable Subcontract Agreement. For greater certainty, and subject to (i) the consent of HMQ, acting reasonably, (ii) the terms and conditions of or the ensured continuation of the Bonds and (iii) the undertaking of the Lenders' Agent and/or the Appointed Representative that, upon the exercise of any Step-Out Rights pursuant to Section 8, the Lenders' Agent and/or the Appointed Representative shall cause to be

assigned to HMQ, or as HMQ may direct, all subcontracts which are assigned to or at the direction of the Lenders' Agent and/or the Appointed Representative as hereinafter provided, to the extent required in connection with the exercise by the Appointed Representative of the rights and remedies set forth in Section 7.3, HMQ covenants and agrees with the Lenders' Agent that it shall, upon written request of the Lenders' Agent and as the Lenders' Agent and/or the Appointed Representative may direct, in respect of each subcontract which is the subject of any Assignable Subcontractor Agreement (an "ASA"), issue (i) an Assignment Notice (in accordance with and as defined in Section 3(c) of the ASA), to the subcontractor party thereto indicating therein as Assignee (as defined in the Section 3(c)), the Lenders' Agent, the Appointed Representative or as the Lenders' Agent or the Appointed Representative may otherwise direct, or (ii) a Direct Assignment Notice (in accordance with and as defined in Section 3(e) of the ASA) to the subcontractor party thereto indicating therein as GC Assignee (as defined in Section 3(d) of the ASA) any Replacement Construction Contractor.

**9. PAYMENT DIRECTION OF SUBSTANTIAL COMPLETION PAYMENT AND COMPENSATION PAYMENT**

9.1 HMQ acknowledges the assignment by Project Co of the Substantial Completion Payment, HMQ Holdback, Certified Cost to Complete, any Compensation Payment and any Step-Out Amount to the Lenders' Agent under the security granted to the Lenders' Agent by Project Co under the Lending Agreements. Project Co hereby irrevocably directs HMQ to pay the Substantial Completion Payment, HMQ Holdback, Certified Cost to Complete, any Compensation Payment, and any Step-Out Amount which becomes payable to Project Co in accordance with the Project Agreement, to the Lenders' Agent or as the Lenders' Agent may direct. HMQ acknowledges such direction and agrees to pay the Substantial Completion Payment, HMQ Holdback, Certified Cost to Complete, any Compensation Payment and any Step-Out Amount to the Lenders' Agent in accordance with such direction. Project Co acknowledges and agrees that payment by HMQ of the Substantial Completion Payment, HMQ Holdback, Certified Cost to Complete, any Compensation Payment or any Step-Out Amount in accordance with this Section 9.1 to the Lenders' Agent or as the Lenders' Agent may direct, constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to make the Substantial Completion Payment, HMQ Holdback, Certified Cost to Complete, any Compensation Payment or any Step-Out Amount, as the case may be. For greater certainty, no Compensation Payment shall be payable on a termination of the Project Agreement by Appointed Representative as a result of Appointed Representative exercising its rights under Section 7.3(b) of this Lenders' Direct Agreement.

**10. ASSIGNMENT**

10.1 HMQ may assign or otherwise dispose of the benefit of the whole (but not part) of its interest in this Lenders' Direct Agreement to any person to whom HMQ assigns or otherwise disposes of its interest in the Project Agreement and the other Implementing Agreements pursuant to Section 47.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment or disposition. Such

assignee shall assume the obligations and acquire the rights of HMQ under this Lenders' Direct Agreement. Upon any such assignment or disposition, HMQ shall be released from all of its obligations hereunder to the extent such obligations are assumed by the assignee. Project Co and the Lenders' Agent shall, at HMQ's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

10.2 The Lenders' Agent may only assign or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and with the prior written consent of HMQ, such consent not to be unreasonably withheld or delayed. The Lenders' Agent shall cause the assignee to enter into an assumption agreement of this Lenders' Direct Agreement in form and substance reasonably satisfactory to HMQ with Project Co and HMQ. Project Co and HMQ shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

10.3 Project Co may not assign or otherwise dispose of any interest in this Lenders' Direct Agreement.

## **11. NOTICES**

### **11.1 Notices to Parties**

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

If to HMQ:

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5J 2W3

Fax: [REDACTED]  
Attn: [REDACTED]

With a copy to:

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

Fax: [REDACTED]  
Attn: [REDACTED]

If to the Lenders' Agent: [REDACTED]

Attn: [REDACTED]  
Fax No: [REDACTED]

with a copy to:

**[REDACTED]**

Attn: **[REDACTED]**

Fax No: **[REDACTED]**

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

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

With a copy to:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

## **11.2 Facsimile**

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11.2.

## **11.3 Change of Address**

Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 11.1 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.

## **11.4 Deemed Receipt of Notices**

- (a) Subject to 11.4(b), a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing. Subject to Section 11.4(c), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(c) and 11.4(d), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.4.

- (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.

## **12. GENERAL**

### **12.1 Amendments**

This Lenders' Direct Agreement may not be amended, restated, supplemented or otherwise modified 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, supplement or other modification, as the case may be, to this Lenders' Direct Agreement.

### **12.2 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 Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such 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.

### **12.3 Relationship Between the Parties**

Each of the Parties acknowledges that it is contracting on its own behalf and not as agent for any other person. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties or between any of the Parties and the Province, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between HMQ, the Province, and any Affiliate, representative or employee of Project Co or the Lenders' Agent.

#### **12.4 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.

#### **12.5 No Reliance**

- (a) Each of the Parties acknowledges that:
- (i) it has not entered into this Lenders' Direct 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 Lenders' Direct Agreement or not, except those expressly made, given or repeated in this Lenders' Direct Agreement, and the only remedy or remedies available in respect of any misrepresentation or untrue statement or warranty made to it shall be those expressly provided for in this Lenders' Direct Agreement; and
  - (ii) this Section 12.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lenders' Direct Agreement which was induced by fraud, for which the remedies available shall be all those available under Applicable Law.

#### **12.6 Severability**

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

#### **12.7 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.

#### **12.8 Governing Law and Jurisdiction**

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada

applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.

- (b) The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Lenders' Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

#### **12.9 Cumulative Remedies**

Except as otherwise set forth in this Lenders' Direct Agreement, the rights, powers and remedies of each Party set forth in this Lenders' Direct 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 Lenders' Direct Agreement.

#### **12.10 Further Assurance**

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

#### **12.11 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 Lenders' Direct Agreement.

#### **12.12 Counterparts**

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

#### **12.13 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 anglaise et s'en declare satisfaite.



**12.14 Confidentiality**

The Lenders' Agent shall comply with the obligations on the part of Project Co contained in Articles 40 and 41 of the Project Agreement and this obligation shall survive the termination of this Lenders' Direct Agreement.

**12.15 Tombstone Marketing**

For the purpose of “tombstone marketing”, and in the case of HMQ, other promotional purposes, each of HMQ, the Lenders' Agent, the Lenders and Project Co (collectively, the “Grantors” and individually, a “Grantor”) authorizes and consents to the reproduction, disclosure and use by any of them (collectively, the “Grantees” and individually, a “Grantee”) of the names and identifying logos of any of the Grantors and the transactions herein contemplated, to enable each Grantee to publish promotional “tombstones”. Each Grantor acknowledges and agrees that each Grantee shall be entitled to determine, in its discretion, whether to use such information and that no compensation will be payable by any Grantee resulting therefrom. No Grantee shall have any liability whatsoever to any Grantor or any of its employees, officers, directors, affiliates or shareholders, in obtaining and using such information in accordance with this Section 12.15. Notwithstanding the foregoing, each Grantee agrees to provide the applicable Grantor with a mock up of any such information prior to any publication and to obtain the applicable Grantor's consent to the use thereof, which consent shall not be unreasonably withheld.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

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

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

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I have authority to bind the corporation.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR LENDERS' DIRECT AGREEMENT]**

**NATIONAL BANK FINANCIAL INC.**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

I/We have authority to bind the corporation

**[EXECUTION PAGE FOR LENDERS' DIRECT AGREEMENT]**

**AIRLIX TRANSIT PARTNERS INC.**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation

**[EXECUTION PAGE FOR LENDERS' DIRECT AGREEMENT]**

**APPENDIX A**

**PRE-QUALIFIED PROPONENTS**

**[REDACTED]**

TOR01: 4578589: v24

**SCHEDULE 5**

**FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT  
FOR DESIGN AND CONSTRUCTION CONTRACT**

**THIS AGREEMENT** made as of the 15<sup>th</sup> day of December, 2011, between

**AIRLINX TRANSIT PARTNERS INC.**, a corporation incorporated under the laws of Ontario

(hereinafter called “**Project Co**”)

**OF THE FIRST PART,**

- and -

**AIRLINX TRANSIT PARTNERS JV**, an unincorporated joint venture between **AECON CONSTRUCTION AND MATERIALS LIMITED** and **DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

(hereinafter called “**Construction Contractor**”)

**OF THE SECOND PART,**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”)

**OF THE THIRD PART.**

**WHEREAS** pursuant to a project agreement dated as of the 15<sup>th</sup> day of December, 2011 between Project Co and HMQ (such agreement, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, being hereinafter called the “**Project Agreement**”), Project Co has agreed to construct or cause to be constructed the Project as defined in the Project Agreement;

**AND WHEREAS** Project Co and the Construction Contractor entered into a design and construction contract made as of even date herewith (such construction contract, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, which may hereafter be made in accordance with the terms thereof and this Agreement, being hereinafter called the “**Design and Construction Contract**”);

**AND WHEREAS** under the Project Agreement, Project Co has agreed to assign to HMQ all right, title and interest of Project Co in and to the Design and Construction Contract as collateral security for the observance and performance of the obligations of Project Co under the Project Agreement;

**AND WHEREAS** under the Project Agreement, Project Co has agreed to cause the Construction Contractor to enter in to this Agreement;

**NOW THEREFORE**, in consideration of the premises and the covenants herein contained, and the sum of \$2.00, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. As additional security for the observance and performance of the obligations of Project Co under the Project Agreement (the “**Obligations**”), Project Co hereby irrevocably, assigns, transfers and sets over (the “**Assignment**”) to and in favour of HMQ as and by way of a specific assignment and transfer all of the right, title and interest of Project Co in, and with respect to, the Design and Construction Contract and all benefit, power and advantage of Project Co to be derived therefrom and otherwise to enforce the rights of Project Co thereunder (collectively, the “**Assigned Rights**”), provided that the Assignment of the Assigned Rights provided for in this Agreement shall only be effective upon the termination of the Project Agreement as a result of a default or event of default by Project Co thereunder and may be exercised by HMQ at its option in its Sole Discretion (as defined in the Project Agreement) at any time or times thereafter subject to and in accordance with the provisions of this Agreement.
2. Unless and until notification is given to Construction Contractor in accordance with any of the notices referred to in Subsections 3(e), (f) and (g) below, Project Co shall be entitled to enforce all of the benefits and powers under the Design and Construction Contract and to deal with, and be obligated to, Construction Contractor in respect of the Design and Construction Contract and matters arising therefrom in the same manner and to the same extent as if Project Co had not made the Assignment in Section 1 hereof.
3. Construction Contractor hereby
  - (a) acknowledges and consents to any Assignment that may occur pursuant to this Agreement and confirms that any such Assignment that may occur pursuant to this Agreement is permitted pursuant to the provisions of the Design and Construction Contract;
  - (b) agrees not to:
    - (i) terminate or agree to the termination of all or any part of the Design and Construction Contract;
    - (ii) make or agree to any amendment, restatement, supplement or other modification of, or waive or exercise any of its rights under, the Design and Construction Contract that materially adversely affect Project Co’s

ability to perform its obligations under the Project Agreement or that has the effect of increasing any liability of HMQ, whether actual or potential;

- (iii) enter into, or permit the entry into by any other person of, any agreement replacing all or part of the Design and Construction Contract;
- (iv) sell, assign, transfer, charge, subcontract, sub participate or otherwise dispose of any interest in the Design and Construction Contract except as may be permitted under Section 47.1 of the Project Agreement, applied mutatis mutandis,

without the prior written consent of HMQ, not to be unreasonably withheld or delayed, provided that such consent shall not be withheld and shall be provided in reasonable time, where the relevant matter will not materially adversely affect Project Co's ability to perform its obligations under the Project Agreement or have the effect of increasing any liability of HMQ, whether actual or potential;

- (c) agrees to give HMQ prompt written notice of any default by Project Co under the Design and Construction Contract, provided, however, in the event that HMQ exercises the option in accordance with this Agreement and effects the Assignment within 5 Business Days of receipt by HMQ of the notice, the Construction Contractor shall not be entitled to exercise any right to terminate the Design and Construction Contract that Construction Contractor may have under the Design and Construction Contract arising from or in relation to any event taking place prior to such Assignment;
- (d) represents and warrants to HMQ that as of the date hereof, the Design and Construction Contract is valid, binding upon the parties thereto and in full force and effect, unamended and constitutes the entire agreement between Project Co and Construction Contractor with respect to the subject matter thereof and that Construction Contractor is in compliance with and has performed its obligations contained in the Design and Construction Contract which are required to be complied with and/or performed to date and that, as far as Construction Contractor is aware, Project Co is in compliance with and has performed its obligations contained in the Design and Construction Contract which are required to be complied with and/or performed to date;
- (e) agrees that, immediately upon receipt by Construction Contractor of written notice (the "**Assignment Notice**") from HMQ that the Design and Construction Contract is being assigned to HMQ, the Lenders (as hereinafter defined), or the Lenders' or HMQ's nominee (in any event, such party identified in such written notice being the "**Assignee**"), the Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Design and Construction Contract, without Construction Contractor's consent and without the payment of any penalty or other amount, and Construction Contractor shall deal with the Assignee as if it had been originally named in place of Project Co in the Design and Construction Contract;



- (f) agrees that the Assignee may, at any time after the giving of the Assignment Notice in subsection 3(e) above, give written notice (the “**Successive Assignment Notice**”) to Construction Contractor of a further assignment of the Design and Construction Contract to a new project company (the “**Project Co Assignee**”), and that immediately upon receipt of any Successive Assignment Notice, the Project Co Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Design and Construction Contract without Construction Contractor’s consent and without the payment of any penalty or other amount and Construction Contractor shall deal with the Project Co Assignee as if it had been originally named in place of Project Co in the Design and Construction Contract;
  - (g) agrees that, notwithstanding subsections 3(e) and (f) herein contained, HMQ may give written notice (the “**Direct Assignment Notice**”) to Construction Contractor of the assignment of the Design and Construction Contract directly to the Project Co Assignee, and that immediately upon receipt of the Direct Assignment Notice, the Project Co Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Design and Construction Contract without Construction Contractor’s consent and without the payment of any penalty or other amount and the Construction Contractor shall deal with the Project Co Assignee as if it had been originally named in place of Project Co in the Design and Construction Contract; and
  - (h) agrees, upon the reasonable request of HMQ, from time to time, to provide a certificate to HMQ as to the status of the Subcontract including a description of any events, which, with the passage of time or the giving of notice or both, would constitute a default thereunder.
4. Nothing herein contained shall render HMQ or the Lenders liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of Project Co under the Design and Construction Contract, unless and until HMQ has given the Assignment Notice to Construction Contractor, the giving of which Assignment Notice the Construction Contractor acknowledges is in the Sole Discretion of HMQ, in which event, the Assignee (and if applicable, any Project Co Assignee) shall then become liable for the obligations, covenants and agreements of Project Co under the Design and Construction Contract, provided that from and after the date of the Successive Assignment Notice to Construction Contractor, the Assignee shall have no liability whatsoever to the Construction Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Design and Construction Contract from and after that date, and provided further, that if HMQ gives the Direct Assignment Notice, HMQ or the Lenders shall have no liability whatsoever to the Construction Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Design and Construction Contract at any time.

5. Construction Contractor acknowledges and agrees that all of the right, title and interest of Project Co in the Design and Construction Contract has been, or may be, assigned by Project Co to the Lenders' Agent and to such additional Lender(s) as may participate with such named lender from time to time (collectively, the "**Lenders**") as security for the obligations of Project Co to Lenders (the "**Lenders' Assignment**"). The rights of HMQ hereunder to take or direct an assignment of the Design and Construction Contract are expressly subject to the rights of Lenders under the Lenders' Direct Agreement (as defined in the Project Agreement) to exercise its rights under the Lenders Assignment prior to the exercise by HMQ of its rights under this Agreement to take or direct an assignment of the Design and Construction Contract, and if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Lenders' Direct Agreement with respect to the exercise of rights under the Assignment herein, or the exercise of rights under the Lenders' Assignment, the provisions of the Lenders' Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.
6. Project Co agrees that all costs and expenses incurred by HMQ or Lenders in curing or attempting to cure any default by Project Co under the Design and Construction Contract, together with interest thereon at the Default Interest Rate (as defined in the Project Agreement) shall be payable by Project Co to HMQ or Lenders, as the case may be, on demand. Without limiting the foregoing, if Project Co fails to make any such payment to HMQ as required hereunder, the amount of such a payment shall be deemed to be an amount which is due to HMQ by Project Co pursuant to the terms of the Project Agreement.
7. Construction Contractor acknowledges receipt of the Lenders' Direct Agreement, a copy of which is attached as Appendix A hereto and hereby consents to and agrees to be bound by the provisions thereof.
8. Any notice, request or demand required or permitted to be given hereunder shall be in writing and shall be served personally, sent by prepaid registered mail or by confirmed facsimile transmission addressed as follows:

- (a) in the case of Project Co:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

with a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

(b) in the case of HMQ:

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5J 2W3

Fax: [REDACTED]  
Attn: [REDACTED]

with a copy to:

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

Fax: [REDACTED]  
Attn: [REDACTED]

with a copy to the HMQ Representative:

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

Fax: [REDACTED]  
Attn: [REDACTED]

with a copy to the Lenders' Agent:

[REDACTED]

Attn: [REDACTED]  
Fax No: [REDACTED]

with a copy to:

[REDACTED]

Attn: [REDACTED]  
Fax No: [REDACTED]

(c) in the case of the Construction Contractor:

[REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

with a copy to:

[REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

Any party may from time to time change its address and recipient for service by notice to the other party or parties given in the manner aforesaid.

Notices which are served in the manner aforesaid shall be deemed sufficiently served for all purposes of this Agreement, in the case of those personally served or transmitted by facsimile transmission, on the date of such service or transmission, provided same is a Business Day (as hereinafter defined), and if not on the next following Business Day, and in the case of those given by registered mail, on 5 Business Days following the mailing thereof. Provided that in the event normal mail service is interrupted by strikes, slow-down or other cause, then the party sending the notice shall utilise any similar service which has not been so interrupted in order to ensure the prompt receipt of the notice, request or demand by the other party or parties, and for the purpose of this Section such service shall be deemed to be personal service or facsimile transmission. Business Day shall mean a day which is not: (i) a Saturday or Sunday; or (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

9. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
10. This Agreement shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
11. Construction Contractor shall from time to time and at all times hereafter, upon the reasonable written request of HMQ so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of HMQ, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.
12. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the parties have executed this Assignable Subcontract Agreement for Design and Construction Contract by affixing their corporate seals under the hands of their proper signing officers duly authorized in that behalf.

**AIRLIX TRANSIT PARTNERS INC.**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT FOR  
DESIGN AND CONSTRUCTION CONTRACT]**

**AIRLIX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC. BY:**

**AECON CONSTRUCTION AND MATERIALS LIMITED**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT FOR  
DESIGN AND CONSTRUCTION CONTRACT]**

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

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I have authority to bind the corporation.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT FOR  
DESIGN AND CONSTRUCTION CONTRACT]**

**APPENDIX A**

**[Attach Lenders' Direct Agreement (Schedule 4) to execution copy of this Agreement.]**

TOR01: 4577547: v18



**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of 15<sup>th</sup> day of December, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”)

**AND:**

**AIRLINX TRANSIT PARTNERS INC.**, a corporation incorporated under the laws of Ontario

(“**Project Co**”)

**AND:**

**HATCH MOTT MACDONALD LTD.**, a corporation incorporated under the laws of Ontario

(the “**Independent Certifier**”)

**WHEREAS:**

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

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

## 1. DEFINITIONS

### 1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
    - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
    - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
    - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
  - (ii) **“Certification Services Variation”** is any change to the Certification Services.
  - (iii) **“Contract Material”** means all material:
    - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
    - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services, including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
  - (iv) **“Fee”** means the fees payable by HMQ and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
  - (v) **“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.
  - (vi) **“PA Parties”** means both HMQ and Project Co, and **“PA Party”** means either HMQ or Project Co, as the context requires.

- (vii) **“Project Agreement”** means that certain project agreement made on or about the date hereof between HMQ and Project Co with respect to the design, construction and financing of the ARL Spur Line and ARL T1 Station.

## **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 Section 9.4 and 9.5 of this Independent Certifier Agreement.

#### **3.2 Acknowledgement of Independent Certifier**

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

#### **3.3 Standard of Care**

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

#### **3.4 Duty of Independent Judgment**

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;

- (ii) act reasonably and professionally;
  - (iii) act in a timely manner:
    - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
    - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
  - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

### **3.5 Authority to Act**

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
  - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
  - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

### **3.6 Knowledge of the PA Parties' Requirements**

- (a) The Independent Certifier warrants that:
- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
  - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
  - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
  - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at or on the ARL Spur Line and ARL T1 Station and Site including restrictions on any such access or protocols that are required; and
  - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

### **3.7 Co-ordination and Information by Independent Certifier**

- (a) The Independent Certifier must:
- (i) fully cooperate with the PA Parties;
  - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
  - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
  - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

### **3.8 Conflict of Interest**

- (a) The Independent Certifier warrants that:
  - (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as a technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
  - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

### **3.9 Independent Certifier Personnel**

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program shall:
  - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, The Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
  - (ii) have demonstrated competence in the commissioning of comparable rail lines;
  - (iii) have an understanding of the appropriate CSA standards related to commissioning for rail lines, as well as other applicable 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 HMQ with evidence satisfactory to HMQ of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the

proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.

### **3.10 Minimize Interference**

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

## **4. ROLE OF THE PA PARTIES**

### **4.1 Assistance**

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

### **4.2 Instructions in Writing**

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

### **4.3 Information and Services**

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

### **4.4 Additional Information**

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
  - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the HMQ Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
  - (ii) Project Co or HMQ, 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 ARL Spur Line, ARL T1 Station 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 ARL Spur Line, ARL T1 Station and the Works;
  - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the ARL Spur Line, ARL T1 Station and the Works; and
  - (iii) not causing any damage to the Site, the ARL Spur Line, ARL T1 Station or the Works.

#### **4.6 PA Parties Not Relieved**

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

#### **4.7 PA Parties not Liable**

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

### **5. CERTIFICATION QUALITY PLAN**

#### **5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
  - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the HMQ Representative and the Project Co Representative;
  - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the HMQ Representative and the Project Co Representative;
  - (iii) if satisfactory to each of the HMQ Representative and the Project Co Representative, implement such certification quality plan; and

- (iv) if not satisfactory to each of the HMQ Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the HMQ Representative and the Project Co Representative, and implement it if satisfactory to each of the HMQ Representative and the Project Co Representative.

## **5.2 Certification Quality Plan not to Relieve Independent Certifier**

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
  - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
  - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the HMQ Representative or the Project Co Representative.

## **6. SUSPENSION**

### **6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
  - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
  - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

### **6.2 Costs of Suspension**

- (a) The Independent Certifier will:
  - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
  - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Sections 6.1(a)(i).

### **6.3 Recommencement**

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

## **7. INSURANCE AND LIABILITY**

### **7.1 Independent Certifier's Professional Indemnity Insurance**

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
  - (i) professional liability insurance:
    - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
    - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
  - (ii) comprehensive general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

### **7.2 Workers' Compensation Insurance**

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

## **8. PAYMENT FOR SERVICES**

### **8.1 Payment of Fee**

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

## **9. CERTIFICATION SERVICES VARIATIONS**

### **9.1 Notice of Certification Services Variation**

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
  - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
  - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the HMQ Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

**9.2 No Adjustment**

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

**9.3 External Services**

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

**9.4 Certification Services Variation Procedure**

- (a) The HMQ Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the HMQ Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the HMQ Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
  - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
  - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

**9.5 Cost of Certification Services Variation**

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
  - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
  - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
  - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the HMQ Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

## **10. TERM AND TERMINATION**

### **10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the 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, 12.7, 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **11. INDEMNITY**

### **11.1 PA Parties to Save Independent Certifier Harmless**

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
  - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
  - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.2 Independent Certifier to Save PA Parties Harmless**

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.



- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
  - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
  - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.3 Conduct of Claims**

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement

## **12. GENERAL**

### **12.1 Entire Agreement**

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

### **12.2 Negation of Employment**

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

### **12.3 Waiver**

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

will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

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

#### **12.4 Notices**

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

If to HMQ:

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5J 2W3

Fax: **[REDACTED]**  
Attn: **[REDACTED]**

with a copy to:

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

Fax: **[REDACTED]**  
Attn.: **[REDACTED]**

If to Project Co:

**[REDACTED]**

Fax: **[REDACTED]**  
Attn.: **[REDACTED]**

with a copy to:

**[REDACTED]**

Fax: **[REDACTED]**  
Attn.: **[REDACTED]**

If to Independent Certifier: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **12.5 Transfer and Assignment**

- (a) The Independent Certifier:
  - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and

- (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

## **12.6 Governing Laws and Jurisdictions**

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

## **12.7 HMQ Designate**

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

## **12.8 Confidentiality**

- (a) The Independent Certifier must ensure that:
  - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
  - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

## **12.9 Contract Material**

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

## **12.10 Amendment**

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties and

the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

#### **12.11 Severability**

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

#### **12.12 Enurement**

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

#### **12.13 Counterparts**

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

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the parties have executed this Independent Certifier Agreement as of the date first above written.

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

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I have authority to bind the corporation.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]**

**AIRLINX TRANSIT PARTNERS INC.**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]**



**HATCH MOTT MACDONALD LTD.**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]**

**APPENDIX A**

**CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (c) Review information relating to Delay Events and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party.
- (e) In accordance with Section 14.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks.
- (g) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement, with the exception of Section 5.10) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.
- (h) Prior to any certification, consider the views and comments of both Project Co and HMQ in relation to the satisfaction of the conditions for certification.
- (i) Conduct and report 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 floor area schedules, certificates and approvals, Permits, Licences, Approvals, and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement.
- (k) Monitor the requirements, progress and results of all Project Co Commissioning and HMQ Commissioning.

- (l) [Intentionally Deleted].
- (m) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (k) above and to advise Project Co and HMQ 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, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
  - (i) issue the applicable certificate; or
  - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (o) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (n) of this Appendix A until the issuance of the applicable certificate.
- (p) Prepare, in consultation with Project Co and HMQ, as soon as reasonably practicable and, in any event within, the time period specified in Section 24.8(a) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
- (q) Prior to Substantial Completion, review Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount.
- (r) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against HMQ budgets and the Cash Allowance Amount.
- (s) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into or onto the ARL Spur Line and ARL T1 Station by HMQ or any agent or contractor of HMQ either before or after Substantial Completion and provide a report to HMQ and Project Co identifying any damage to the ARL Spur Line and ARL T1 Station which has been caused as a result of the installation of such Installed Equipment into or onto the ARL Spur Line and ARL T1 Station by HMQ, its contractors and/or agents.
- (t) 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.

- (u) 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.
- (v) Provide advice on other matters that may arise that both PA Parties may jointly require.
- (w) Review the reports and plans prepared by Project Co, and provide the determinations required from the Independent Certifier, pursuant to Section 13.4A of the Project Agreement.

**APPENDIX B**

**INDEPENDENT CERTIFIER FEE**

**1. Fee for all Certification Services (other than Certification Services identified in Item (v) of Appendix A to this Independent Certifier Agreement).**

**Breakdown of the Total Fixed Fee for all Certification Services (other than the Certification Services identified in Item (v) of Appendix A to this Independent Certifier Agreement).**

	<b>CERTIFICATION SERVICES (as a reference to items in Appendix A to this Independent Certifier Agreement)</b>	<b>FEE (excluding HST)</b>
1.	Item (a) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
2.	Item (b) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
3.	Item (c) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
4.	Item (d) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
5.	Item (e) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
6.	Item (f) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
7.	Item (g) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
8.	Item (h) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
9.	Item (i) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
10.	Item (j) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
11.	Item (k) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
12.	Item (l) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
13.	Item (m) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
14.	Item (n) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
15.	Item (o) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
16.	Item (p) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
17.	Item (q) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
18.	Item (r) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
19.	Item (s) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
20.	Item (t) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
21.	Item (u) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]

22.	Item (w) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
	<b>TOTAL FIXED FEE</b>	<b>\$ [REDACTED]</b>

The fee for all Certification Services (other than the Certification Services identified at item (v) of Appendix A of this Independent Certifier Agreement) will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the Certification Services which is in form and substance satisfactory to the PA Parties and subject to (i) the fee for all Certification Services (other than the Certification Services identified in item (v) of Appendix A to this Independent Certifier Agreement) not exceeding, in aggregate, the Total Fixed Fee of Cdn.\$[REDACTED] (the “**Total Fixed Fee**”), and (ii) the fee for each individual Certification Service identified in items (a) through (w) of Appendix A to this Independent Certifier Agreement (excluding the Certification Services identified at item (v) of Appendix A of this Independent Certifier Agreement) not exceeding, individually, the fee set forth above in respect of such individual Certification Service.

**2. Hourly Rate for Certification Services Contemplated in Item (v) of Appendix A to the Independent Certifier Agreement for each Independent Certifier team member**

<b>TEAM MEMBER</b>	<b>HOURLY RATE</b>
Hatch Mott MacDonald – Project Director	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Peer Review Team	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Project Manager / IC	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Deputy IC	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Lead Architect	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Lead Structural	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Lead Track	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Structural Engineer	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Lead Mechanical	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Mechanical Engineer	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Lead Electrical	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Lead QS	\$[REDACTED] Dollars Canadian per hour (excluding HST)
Hatch Mott MacDonald – Lead Variations	\$[REDACTED] Dollars Canadian per hour (excluding HST)

The fee for the Certification Services identified in item (v) of Appendix A of this Independent Certifier Agreement will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the performance of such Certification Services which is in form and substance satisfactory to the PA Parties.

### **3. Disbursements and Travel Related Expenses**

Total Fixed Fee and Hourly Rates shall be all inclusive and include all labour and materials, insurance costs, disbursements (examples: duplicating, delivery and communications (long distance, videoconferencing and teleconferencing)) and all other overhead including any fees or other charges required by law.

Project Co and HMQ shall not reimburse the vendor for any hospitality, food or incidental expenses incurred. If applicable and subject to prior approval, Project Co and HMQ shall reimburse the vendor for reasonable traveling expenses incurred in connection with the performance of the Services, such reimbursement to be made in accordance with the Government of Ontario's Travel, Meal, and Hospitality Expenses Directive.

The aggregate of all disbursements and expenses shall not exceed 10% of the total contract value.

**APPENDIX C**

**INDEPENDENT CERTIFIER PERSONNEL**

The following personnel shall be involved in the performance of the Certification Services:

<b><u>Name</u></b>	<b><u>Title/Role</u></b>
[REDACTED]	Project Manager / IC Team Leader
[REDACTED]	Backup Team Leader / Deputy IC
[REDACTED]	Project Director
[REDACTED]	Structures Lead
[REDACTED]	Structures Support
[REDACTED]	Track Lead
[REDACTED]	Architecture Lead
[REDACTED]	Cost Lead
[REDACTED]	Mechanical Lead
[REDACTED]	Mechanical Support
[REDACTED]	Electrical Lead
[REDACTED]	Peer Review Team
[REDACTED]	Peer Review Team



## APPENDIX D

### CONDUCT OF CLAIMS

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both HMQ and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

- (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
  - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
  - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

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

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**SCHEDULE 7**

**[INTENTIONALLY DELETED]**

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**SCHEDULE 8  
LIST OF PROJECT CO PARTIES**

**[REDACTED]**

**SCHEDULE 9**

**KEY INDIVIDUALS**

<b>Project Co Party</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
Design Team	Lead Architect	[REDACTED]
Design Team	Lead Mechanical Engineer	[REDACTED]
Design Team	Lead Electrical Engineer	[REDACTED]
Design Team	Lead Guideway Structural Engineer	[REDACTED]
Design Team	Lead Station Structural Engineer	[REDACTED]
Design Team	Design Manager	[REDACTED]
Design Team	Design Quality Manager	[REDACTED]
Design Team	Rail Lead	[REDACTED]
Construction Contractor	Design Coordinator	[REDACTED]
Construction Contractor	Construction Manager	[REDACTED]
Construction Contractor	Site Superintendent	[REDACTED]
Construction Contractor	Health and Safety Officer	[REDACTED]
Construction Contractor	Project Manager	[REDACTED]
Construction Contractor	Permitting and Traffic Management Officer	[REDACTED]
Construction Contractor	Commissioning Coordinator	[REDACTED]
Construction Contractor	Environmental Reporting Coordinator	[REDACTED]
Construction Contractor	Construction Quality Manager	[REDACTED]
Project Co	Project Co Director	[REDACTED]
Project Co	Quality Director	[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 Section 11, Project Co Responsibilities and Construction Obligations, of this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ in accordance with the Review Procedure prior to Substantial Completion of each phase of work in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in this Schedule 10).

#### **2. SCHEDULE FOR WORKS SUBMITTALS**

**2.1** The Project Co shall develop a Works Schedule in accordance with Section 13 that incorporates the design and plan certification process for the project. The design development and plan submission schedule shall take into account required staged Design Development Submittals as per Section 11.4.

**2.2** The Works Schedule shall include sufficient time for coordination and required approvals from all regulatory agencies and project stakeholders.

**2.3** The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative taking into account both the resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.

**2.4** The Works Schedule and any amendment to the Works Schedule shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal, provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1 of this Schedule 10.

**2.5** Project Co shall, in scheduling Works Submittals and in the construction of the Works, allow adequate time prior to performing the construction of the Works that are the subject of the Works Submittals, for review of the Works Submittals and for Project Co to make changes to Works Submittals that may be required if comments are received on the

Works Submittals, such review and required changes to be in accordance with this Schedule 10.

- 2.6** If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the HMQ Representative may, at the HMQ Representative's discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall review and revise the Works Schedule accordingly, taking into account both the resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.7** Project Co shall submit all Works Submittals to HMQ in accordance with the current Works Schedule.

### **3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS**

- 3.1** Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all Works Submittals to HMQ, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2** Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon. Project Co shall establish a Web Based Project Management System at Commercial Close which shall be operational and managed by Project Co until Final Completion. The system is to be capable of archiving all Works Submittals (including for certainty, Project Co site instructions, deficiency reviews, etc.) in a format that can be viewed by HMQ, and the Planning, Design & Compliance Consultant electronically either on the system or downloaded and viewed as a PDF file. The system must also be capable of archiving all Planning, Design & Compliance Consultant's correspondence related to the review of the Works Submittals and Site review reports. All Works Submittals shall be uploaded by Project Co to the Web Based Project Management System in PDF format at the same time that the Works Submittals are forwarded to HMQ. The system must be capable of automatically informing the Planning, Design & Compliance Consultant, HMQ (via electronic mail) that Works Submittals have been uploaded. The system is to have a dedicated 'request for information' (RFI) module to allow communication between Project Co and the Planning, Design & Compliance Consultant to resolve any questions and or comments with respect to the Output Specifications. A total of 25 users from HMQ, the users and the Planning, Design & Compliance Consultant will be required to access the system.
- 3.3** All Works Submittals shall be in English.
- 3.4** All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable,



by registered professional 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 the Project Agreement and to any Design Data that has previously been subject to review.
- 3.7** All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Works Submittal;
  - (e) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
  - (f) identification of any previous Works Submittal superseded by the current Works Submittal.

#### **4. COMMENTS**

- 4.1** The HMQ Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The HMQ Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:
- (a) "REVIEWED";
  - (b) "REVIEWED AS NOTED"; or
  - (c) "REJECTED".
- 4.2** The comment "REVIEWED" will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.

- 4.3** The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the HMQ Representative. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Works Submittals and the Works, as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and Project Co may be required, at the HMQ Representative’s discretion, to resubmit relevant Works Submittals. In such circumstances the HMQ Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4** The comment “REJECTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, contain significant deficiencies or do not generally conform to the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Works Submittal is re-submitted within 5 Business Days) shall give the HMQ Representative not less than 5 Business Days’ notice of when the Works Submittals shall be resubmitted. The HMQ Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.5** Where the HMQ Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.6** If, at any time after assigning any comment to a Works Submittal, the HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the HMQ Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the 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 HMQ Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8** Where a Works Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by HMQ.
- 4.9** In lieu of returning a Works Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## **5. DISPUTES**

- 5.1** If Project Co disputes any act of HMQ or the HMQ Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the HMQ Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The HMQ Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the HMQ Representative confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 5.2** If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 of this Schedule 10, either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3** Notwithstanding the provisions of Sections 5.1 and 5.2 of this Schedule 10, HMQ may direct that Project Co to revise the Works Submittals in accordance with the comments of HMQ and proceed to perform and complete the 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 46 and Schedule 27 - Dispute Resolution Procedure.

## **6. EFFECT OF REVIEW**

- 6.1** Any review and comment by HMQ or the HMQ Representative of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and

responsibility for the 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 HMQ. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under this Project Agreement or exclude or limit HMQ's rights in respect of the Works under this Project Agreement.

## **7. WORKS SUBMITTAL EXPLANATION**

**7.1** At any time, the HMQ Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to HMQ, to explain to the HMQ Representative and HMQ's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable.

## **8. REVISIONS**

**8.1** Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.

**8.2** Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

**8.3** All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As-Built Drawings.

**8.4** Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

**9. AUDIT BY THE HMQ REPRESENTATIVE**

- 9.1** Without limiting any other right under this Project Agreement, the HMQ Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2** If during an audit or at any other time it is discovered by HMQ or Project Co (or resolved pursuant to Section 9.3 of this Schedule 10) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Works to which they relate and shall advise the HMQ Representative of all such corrections and modifications.
- 9.3** Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 of this Schedule 10, shall be referred in the first instance to the Independent Certifier for resolution.

**10. VARIATIONS**

- 10.1** No alteration or modification to the design, quality and quantity of the 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 HMQ Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to HMQ of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, HMQ may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5.5 of this Schedule 10 including for clarity, the exercise by HMQ of its rights under Section 5.3 of this Schedule 10. Subject to the foregoing sentence, any failure by Project Co to notify HMQ in accordance with this Section 10.2 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the HMQ Representative's comments shall be without cost to HMQ and without any extension of time.

**APPENDIX A  
MINIMUM DESIGN AND CONSTRUCTION  
SUBMITTAL REQUIREMENTS**

**FORMAT FOR WORKS SUBMITTALS**

The following is a breakdown of the contents of each Works Submittal as well as the format for each. All Works Submittals are to be submitted in 3 hole ring binders. Large format drawings (A0 or A1 size) are to be provided separately (bound) as well as reduced format (11" x 17", fold-outs, folded to 8.5" x 11") and included in a 3 hole ring binder. Unless otherwise noted below under the heading "Format", all drawings are also to be provided in half size format. All other works submittals which are not drawings are to be submitted in 8.5" x 11" black and white format, unless otherwise specifically noted below under the heading "Format". In addition to hard copies all Works Submittals are to be included in electronic format (PDF and CAD file) on a CD. *All Works Submittals are to be uploaded to the Web Based Project Management System in PDF format at the same time that the Submittals are forwarded to HMQ. All Works Submittals shall also be provided in the format set forth below.*

**SUBMITTALS**

The following is a detailed list of the Works Submittals that Project Co is required to provide to HMQ for review and comment in accordance with this Schedule 10. Additional Works Submittals may be requested by the HMQ Representative at any time in order to understand the Works, and Project Co shall be required to provide same to HMQ for review in accordance with this Schedule 10. A description of the content of each submittal provided is (as set forth in this Appendix A of Schedule 10) the minimum required for each Works Submittal.

<b>Item #</b>	<b>Title</b>	<b>Description</b>	<b>Format</b>
S-100	Project Co Design Brief <i>(Submitted at the 50%, and 100% Design Development Stage.)</i>	Updated Project Co Design Brief to be issued for both the Guideway and ARL T1 Station at 50% and 100% Design Development Stage. Design Brief to include a detailed table of contents with tabs provided for major sections (i.e. architectural, landscape, civil, interiors, structural, trackwork, geotechnical, drainage, landscaping, mechanical; electrical, sustainable design, etc).  (a) Submissions:  (i) S-100A (50%); and  (ii) S-100B (100%)	
S-101	Design Development <i>(Submitted at the 50%, and 100% Design Development</i>	Minimum Submissions Required for Review in Design Development Stage  Project Co shall provide the following Design Development Submittals in respect of the 50% and 100% Design Development Stage to HMQ for review and comment in accordance	

Item #	Title	Description	Format
	Stage)	<p>with this Schedule 10:</p> <p>(b) Design Development Submittal documents in accordance with the requirements set forth in Schedule 15-2, Part 2-Design and Construction Requirements - Guideway the Project Agreement, including, but not limited to, the following documentation. Where appropriate the information may be provided in the Design Brief:</p> <p>(i) Alignment drawings including:</p> <ul style="list-style-type: none"> <li>• key plan and legend;</li> <li>• continuous plans at 1:500 scale, showing the LRT alignments with curve data and locations of key features such as special track sections, turnouts, embankment grading and other key features;</li> <li>• profiles at 1:1000 horizontal and 1:100 vertical scales</li> <li>• schematic representations of the guideway types in plan and profile</li> <li>• schematic representations of preliminary column locations</li> <li>• typical guideway sections for each guideway section type</li> <li>• typical sections at 100 metre interval at the transition to the mainline</li> <li>• section, plan and profile showing the APM barrier height along the ARL Guideway with relation to the top of the APM vehicle.</li> <li>• sections at each pier bent that supports the APM and ARL showing all clearance envelopes and clearances at 1:100.</li> </ul> <p>(ii) Structural drawings including:</p> <ul style="list-style-type: none"> <li>• A set of general arrangement drawings at a scale of 1:500 of the guideway, showing the horizontal and vertical geometry, deck cross-section, type of structure, structure depth, horizontal and</li> </ul>	

Item #	Title	Description	Format
		<p>vertical clearance to all roads and existing GTAA facilities, span arrangements, preliminary column locations;</p> <ul style="list-style-type: none"> <li>• Abutment drawing (east of Goreway) including plan, elevations and sections;</li> <li>• Pier drawings showing typical columns (one per type) including plans, elevations and sections;</li> <li>• Preliminary drawings showing the proposed construction sequence and method for representative spans and the final approach to the ARL T1 Station on top of the existing substructure and within the station itself.</li> </ul> <p>(iii) Trackwork Design Report and Drawings including:</p> <ul style="list-style-type: none"> <li>• A description of design methods, standards used and supporting design criteria;</li> <li>• A description of the approach to installation, testing and commissioning of trackwork components;</li> <li>• A description of the approach that will be taken for the procurement of rail;</li> <li>• A description of special trackwork design;</li> <li>• A description of the rail heating and special trackwork heating systems;</li> <li>• A description of the design of direct fixation fasteners including the interaction with the elevated guideway components as they relate to the expansion of track and structure;</li> <li>• A description of all infrastructure installed in support of the signalling and communications equipment and future electrification;</li> <li>• A description of the proposed end of the track devise and an</li> </ul>	



Item #	Title	Description	Format
		<p>explanation providing that it is suitable for use on the ARL Spur;</p> <ul style="list-style-type: none"> <li>• Preliminary drawings of special trackwork geometry; Jordan Rails and Restraining Rails;</li> <li>• Preliminary drawings of direct fixation fastener assemblies;</li> <li>• Preliminary drawings for the signals and communications infrastructure;</li> <li>• Engineering drawings for the selected end of track device.</li> </ul> <p>(iv) Electrification Design</p> <p>(v) Geotechnical Report including;</p> <ul style="list-style-type: none"> <li>• A summary of the geotechnical information used in the design development including that obtained through other sources and/or the Proponents own field investigations;</li> <li>• A summary of the identified geotechnical conditions, constraints, concerns and outstanding issues related to the proposed design concept, including a description of the proposed approach to resolve these concerns and issues;</li> <li>• An outline of any additional geotechnical investigations and analyses proposed to address identified geotechnical issues;</li> <li>• Identification of any geotechnical concerns related to construction adjacent to any existing structures;</li> <li>• Foundation design recommendations, including bearing and load capacities for all structural elements;</li> <li>• Embankment design recommendations for the transition section to the mainline;</li> <li>• Identification of any groundwater issues and a description of the</li> </ul>	

Item #	Title	Description	Format
		<p style="text-align: center;">methodology proposed to resolve these issues;</p> <p>(vi) Drainage Report and drawings including:</p> <ul style="list-style-type: none"> <li>• A description of the proposed drainage system for the guideway including the section through the ARL T1 Station;</li> <li>• A description of any proposed measures relative to any environmental requirements for discharge of stormwater run-off;</li> <li>• Preliminary details of catchbasin locations piping routes and connections to existing stormwater systems</li> </ul> <p>(vii) Landscaping &amp; Restoration</p> <ul style="list-style-type: none"> <li>• A description of the proposed approach to meeting the landscaping requirements of the Output Specifications including approach to salvaging and reuse of any existing plant material</li> </ul> <p>(c) Design Development Submittal documents in accordance with the requirements set forth in Schedule 15-2, Part 3-Design and Construction Requirements of the Project Agreement, including, but not limited to, the following documentation:</p> <p>(i) Site Plan;</p> <p>(ii) Complete site details (1:100) and other scales as appropriate;</p> <p>(iii) Site Servicing Plans and details</p> <p>(iv) Architectural plan drawings at 1:100 scale minimum illustrating all interior rooms, areas and spaces with their corresponding names, alphanumeric designation contained in Schedule 15-2, Part 3, Appendix A Space Data Sheets, and showing all structural elements, major mechanical rooms, vertical shafts, floor elevations, key dimensions, column grids, general notes, material notes; overall dimensions, general notes indicating major extent of materials and any special condition or material; keying of building sections; major overhead items noted; project limit lines noted if not otherwise clear; numbered stairs, partitions, interior doors, glazing, millwork and floor patterns shall include grid lines and reference bubbles, and colour scheme to be reproduced on each drawing which uses colour</p>	

Item #	Title	Description	Format
		<p>to identify components;</p> <p>(v) Detailed Platform Station drawings at 1:50 scale floor plans including floor patterns, material and finishes keyed; interior elevations, reflected ceiling plan and their associated elements integrated and coordinated. Detailed and integrated Platform Edge protection System (PEPS) including Platform Screen Doors (PSD), Emergency Exit Doors (EED), Platform End Doors (PED) and transition between the ARL platform and the existing APM station;</p> <p>(vi) Plan detailing how ARL platform width is maximized;</p> <p>(vii) Plan detailing how the ARL T1 Station platform is sloped to match the vertical profile of the ARL Tracks alongside the station;</p> <p>(viii) Building sections and elevations and identifying all finishes, floor to floor heights, overall building height and interface with APM Station;</p> <p>(ix) Detailed sections (1:100 / 1:50 scale) showing all facade component sizes, materials, glazing, weather protection and shading devices, key dimensions and adjacent conditions, floor to floor heights, typical wall sections keyed, details keyed;</p> <p>(x) Detailed elevations (1:100 / 1:50 scale) showing all facade component sizes, materials, glazing, weather protection and shading devices, key dimensions, glazing and mullion spacing, floor lines indicated, relationships to existing and new floor finishes shown, ceiling heights, major internal elevations with extent of finishes, interior materials called out in notes;</p> <p>(xi) Detailed facade systems drawings (1:20 / 1:50 scale) indicating relevant curtain wall details, wall sections at building perimeter, relevant installation details of external materials, partial elevations indicating materials and their inter-relationships. All exterior cladding and glazing systems shall conform to GTAA standards;</p> <p>(xii) Roof plans indicating roof materials, drains and slopes, and major roof mounted equipment, if any. Detailed drawings showing the integration between the ARL station and existing APM station.</p>	

Item #	Title	Description	Format
		<p>(xiii) Four exterior building perspectives in full colour describing the developed exterior with context:</p> <ul style="list-style-type: none"> <li>• Exterior perspective view at eye level taken from the existing Terminal One (looking west);</li> <li>• Exterior perspective view from eye level looking east toward the existing APM Station;</li> <li>• Exterior perspective view taken from the ground level looking up at the ARL T1 Station (looking towards the West); and</li> <li>• Exterior perspective view taken from the ground level looking up at the ARL T1 Station (looking towards the west).</li> </ul> <p>(xiv) Four interior perspectives in full colour describing the developed interior:</p> <ul style="list-style-type: none"> <li>• Interior perspective view taken at eye level of the station looking west from the entrance of the ARL T1 Station towards the end of the station;</li> <li>• Interior perspective view taken at eye level of the station looking east from the end of the station towards the entrance to the APM station;</li> <li>• Interior perspective from every end of the ARL T1 Station towards the centre of the station, showing any interior built elements; and</li> <li>• Interior perspective from the very end of the APM Station looking towards the entrance to the ARL T1 Station.</li> </ul> <p>(xv) Overall reflected ceiling plans with light fixtures, mechanical diffusers, grilles identifying all finishes and ceiling heights as designated in the finish schedule as well as detail drawings for the following spaces: for Platform Station, all public spaces and corridors of the Station; all occupied spaces;</p> <p>(xvi) Interior elevations of the Platform Station and all public spaces, including</p>	

Item #	Title	Description	Format
		<p>corridors and occupied spaces identifying all finishes as designated in the finish schedule and incorporating wayfinding to GTAA standards;</p> <p>(xvii) Interior communication exit and stairs: plans, sections, elevations and details;</p> <p>(xviii) Interior finishes colour and materials selection boards and interior finish schedule of platform and service rooms;</p> <p>(xix) Drawings of all millwork elements shown in Space Layouts (as per Schedule 15-2, Part 3, Appendix A Space Data Sheets) including millwork details for every occupied space, public space, etc. that show all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale) as appropriate;</p> <p>(xx) Exterior wall sections (1:50 scale) and cladding details for the major facade types including the APM Barrier in an appropriate scale (1:20 / 1:10 scale) keyed to the overall elevations;</p> <p>(xxi) Material and finish sample boards of all exterior finishes including APM Barrier and interior finishes of platform and service rooms;</p> <p>(xxii) Facade and building cleaning / maintenance design, including equipment and facilities;</p> <p>(xxiii) Preliminary door and hardware schedules and hardware cut sheets details of public and service room doors;</p> <p>(xxiv) Tower Stair architectural plan drawings at 1:100 scale minimum illustrating all interior spaces and showing all structural elements and mechanical services, floor elevations, key dimensions, column grids, general notes, material notes; keying of building sections; major overhead items noted;</p> <p>(xxv) Detailed Tower Stair drawings at 1:50 scale floor plans including floor pattern, materials and finishes keyed, interior and exterior elevations, detailed sections and elevations; detailed facade systems (1:20 / 1:10 scale);</p> <p>(xxvi) Detailed Tower Stair sections (1:100 / 1:50 scale) showing all facade</p>	

Item #	Title	Description	Format
		<p>component sizes, materials, glazing, key dimensions and adjacent conditions, floor to floor heights, typical wall sections keyed, details keyed;</p> <p>(xxvii) Detailed Tower Stair elevations (1:100 / 1:50 scale) showing all facade component sizes, materials, glazing, key dimensions, glazing and mullion spacing, floor lines indicated, relationships to existing and new floor finishes shown, ceiling heights, major internal elevations with extent of finishes, interior materials called out in notes;</p> <p>(xxviii) Structural drawings at 1:100 scale minimum, indicating integration of the existing substructure elements into the overall structural design, all vertical structural elements at each level, slabs and floor layouts, fully dimensioned and noted;</p> <p>(xxix) Structural details (including but not limited to sections, plan details, schedules), connection details for connections between structural elements and structural elements and non-structural elements;</p> <p>(xxx) Typical and special sections noting typical member sizes, including expansion joint design;</p> <p>(xxxi) Mechanical drawings at 1:00 scale minimum, of every level including mechanical room(s) and roof(s) showing location and basic layout of primary mechanical plant equipment; routing of main feeds and associated shafts and risers including sizing of the mechanical plant equipment, consisting of at minimum single line schematic diagrams for plumbing systems including but not limited to sanitary drainage, storm drainage, domestic hot and cold water distribution; single line schematic diagram for HVAC systems, including but not limited to heating water distribution, steam distribution, chilled water distribution and air distribution, etc.; Platform Screen Doors; single line schematic diagram of systems and distribution for fire suppression systems including but not limited to sprinklers, standpipes, special fire suppression systems;</p> <p>(xxxii) Plumbing Fixture schedules and fixture cut sheets;</p> <p>(xxxiii) Electrical drawings at 1:100 scale minimum, of every level including mechanical room(s) and roof(s) showing detailed layout of electrical and communication rooms indicating mechanical equipment layout, routing of main feeds and associated risers and routing for equipment removal;</p>	

Item #	Title	Description	Format
		<p>single line electrical power and lighting distribution diagram showing point-of- entry, transformers, switchboards, distribution panels, and surge protection; single line diagram of emergency power distribution scheme, including generator(s), switchgear, cabling and fuel storage and supply system; single line diagram of fire alarm systems including zoning scheme;</p> <p>(xxxiv) Expected ARL T1 Station electrical demand load calculations;</p> <p>(xxxv) Platform Screen Door drawings including all mechanical and electrical provisions;</p> <p>(xxxvi) Emergency Backup Generator details, location and capacity;</p> <p>(xxxvii) Detailed electrical drawings showing all conduits, conduit sizes, junction boxes, floor boxes, raceways, troughs, back boxes, cables, etc.;</p> <p>(xxxviii) Lighting design report including analysis of illumination, reflectance, room cavity ratios, plane heights including renovation at the parking garage lighting;</p> <p>(xxxix) Lighting fixture schedules and fixture cut sheets;</p> <p>(xl) Lightning protection and grounding systems;</p> <p>(xli) Communications drawings indicating at minimum single line diagrams of structured cabling system showing vertical and horizontal distribution schemes, telecom point-of-entry, riser rooms, telephone equipment rooms, ancillary rooms;</p> <p>(xlii) Consolidated floor layouts showing electrical power, voice and data outlet locations, power outlets required for facade maintenance equipment , and other cabled systems as required;</p> <p>(xliii) Security drawings indicating at minimum single line schematic diagrams for integrated security systems, including but not limited to building exterior, building entrances, platform video surveillance, video surveillance of all other areas, door control systems, duress and parking alarm system, intercom system, public address system and master clock</p>	

Item #	Title	Description	Format
		<p>system;</p> <p>(xliv) Floor plans showing security systems layouts, locations of all security systems equipment, connection points and control points;</p> <p>(xliv) Security equipment details;</p> <p>(xlvi) Code and Life Safety Analysis Report (including but not limited to description and approach to the code, building classifications, fire ratings, exit locations, travel distances, exit widths, number of exits, washroom requirements, and how design details with private, secure and public circulation routes;</p> <p>(xlvii) Specifications, draft table of contents;</p> <p>(xlviii) Mock up design packages in accordance with Schedule 15, Part 3, Performance Specifications;</p> <p>(xlix) Accessibility compliance report;</p> <p>(l) Preliminary building vibration analysis ;</p> <p>(li) Comprehensive building acoustical design report reviewing all acoustical conditions and design solution;</p> <p>(d) Cladding wind load and pedestrian level wind study to demonstrate that the development will not create unacceptable wind and snow accumulation conditions at train door entrances, exits, underside of elevated station, landscaped open spaces and street sidewalks;</p> <p>(e) Progress report on Sustainable Design based on LEED credit tracking documentation;</p> <p>(f) Sustainable Design credits tracking documentation;</p> <p>(g) Updated Outline Commissioning Program;</p> <p>(h) Any other Works Submittals HMQ reasonably requires to understand the Works (to</p>	



Item #	Title	Description	Format
		<p>be confirmed); and</p> <p>(i) [Intentionally Deleted]; and</p> <p>(j) Submissions:</p> <p>(i) S-101A (50%); and</p> <p>(ii) S-101B (100%)</p>	
S-102	<p>Construction Documents</p> <p><i>(Submitted at the 50%, and 100% Construction Documents Stage)</i></p>	<p>Minimum Submissions Required for Review in the Construction Documents Stage</p> <p>Project Co shall provide the following Construction Document Submittals in respect of the 50% and 100% Construction Documents Stage to HMQ for review and comment in accordance with this Schedule 10:</p> <p>(a) Construction Document Submittals in accordance with the requirements set forth in Schedule 15-2, Part 2 Design and Construction Requirements – Guideway of the Project Agreement and that provides resolution of design concepts developed during the Design Development Stage, including but not limited to:</p> <p>(i) Structural drawings and details</p> <p>(ii) Trackwork drawings and details</p> <p>(iii) Drainage drawings and details</p> <p>(iv) Landscaping and restoration drawings and details</p> <p>(v) Lighting drawings and details</p> <p>(vi) Electrification drawings and details including grounding</p> <p>(b) Construction Document Submittals in accordance with the requirements set forth in Schedule 15-2, Part 3 Design and Construction Requirements of the Project Agreement and that provides resolution of design concepts developed during the Design Development Stage, including but not limited to:</p>	

Item #	Title	Description	Format
		<ul style="list-style-type: none"> <li>(i) Site plan layout;</li> <li>(ii) Complete site details (1:100) and other scales as appropriate;</li> <li>(iii) Site Servicing Plans and details;</li> <li>(iv) Architectural, structural, mechanical, electrical, lighting, security and communications system drawings including floor plans, reflected ceiling plans, roof plans indicating drains, falls and major equipment; sections, elevations, details, and identifying all finishes as designated in the finish schedules, cut sheets, etc.;</li> <li>(v) Interior finish schedules;</li> <li>(vi) Millwork plans, elevations, sections and details and identifying all finishes;</li> <li>(vii) Door, frame and hardware schedules;</li> <li>(viii) Windows and glazing schedule;</li> <li>(ix) Louvers Schedule;</li> <li>(x) Lighting fixture schedules;</li> <li>(xi) Exterior wall sections and cladding details;</li> <li>(xii) Stair plans, sections and details;</li> <li>(xiii) Washroom plans and details;</li> <li>(xiv) Updated specifications;</li> <li>(xv) Updated Code and Life Safety Analysis Report;</li> <li>(xvi) Updated Accessibility Compliance Report.</li> <li>(c) Report on review and adjustments of mock-ups;</li> </ul>	

Item #	Title	Description	Format
		<p>(d) Progress report on Sustainable design credit tracking documentation;</p> <p>(e) Updated Outline Commissioning Program;</p> <p>(f) Draft of Final Commissioning Program;</p> <p>(g) Works Schedule, Updated monthly, showing complete sequence of construction activity, identifying Works</p> <p>(i) dates for submission, review time, resubmission time and last date for meeting fabrication schedule of all required Shop Drawings and samples;</p> <p>(ii) the early and late start, early and late finish, float dates and duration of all activities;</p> <p>(iii) estimated percentage of completion for each item of the Works at each submission of schedule;</p> <p>(iv) changes occurring since previous submission of schedule; and</p> <p>(v) a narrative report defining:</p> <ul style="list-style-type: none"> <li>• problem areas, anticipated delays, and impact on schedule;</li> <li>• corrective action recommended and its effect; and</li> <li>• effect of changes on schedules of Project Co Parties;</li> </ul> <p>(h) Any other Works Submittals HMQ reasonably requires to understand the Works; and</p> <p>(i) [Intentionally Deleted]</p> <p>(j) Submissions:</p> <p>(i) S-102A (50%); and</p> <p>(ii) (ii) S-102B (100%)</p>	

<b>Item #</b>	<b>Title</b>	<b>Description</b>	<b>Format</b>
S-103	Authorities Having Jurisdiction	(Provide a copy of submissions documents, correspondence and final permits received from all Authorities Having Jurisdiction. AHJ's including but not limited to: <ul style="list-style-type: none"> <li>• Facilities Alteration Permit(s)</li> <li>• ESA Review</li> <li>• TRCA</li> <li>• All others as required to execute the Works</li> </ul>	
S-104	Specifications <i>(Submitted at the 50%, and 100% Construction Documents Stage.)</i>	Detailed specification sections (Masterformat system) for all components of the ARL Spur Line and ARL T1 Station.  (a) Submissions:  (i) S-104A (50%); and  (ii) S-104B (100%)	
S-105	Issued Construction Documents for	Contract Documents issued for Construction (representing all trades, contracts, sub-contracts, etc.) including Specifications.	
S-106	Shop Drawings	Shop drawings for all systems and components of the ARL Spur Line and ARL T1 Station in accordance with industry standards. Complete list of shop drawings to be provided within 1 month after Commercial Close.  At any time during the course of the Project additional shop drawings may be requested by HMQ and shall be provided by Project Co for review by HMQ pursuant to this Schedule 10.  Shop drawings are to be submitted by Project only after they have been reviewed by the Project Co Representative. Shop drawings noted as Rejected by Project Co Representative are not to be submitted for review until they have been resubmitted and accepted by the Project Co Representative.	
S-107	Site Instructions	Copies of all Site Instructions issued to construction team as amendments to Issue for Construction (IFC) documents.	
S-108	Samples	Samples for all systems and components of the ARL Spur Line and ARL T1 Station in accordance with industry standards. Complete list of shop drawings to be provided within 1 month after	

Item #	Title	Description	Format
		<p>Commercial Close.</p> <p>At any time during the course of the Project additional samples may be requested by HMQ and shall be provided by Project Co for review by HMQ pursuant to this Schedule 10.</p>	
S-109	Mock-ups	<p>Mock-ups are to be provided for all systems and components of the ARL Spur Line and ARL T1 Station in accordance with industry standards.</p> <ul style="list-style-type: none"> <li>(a) Platform Station Mock-up as set out in Schedule 15-2, Part 3, Appendix B, Performance Specifications; and</li> <li>(b) Exterior Cladding Mock-up (including barrier free) as set out in Schedule 15-2, Part 3, Appendix B, Specifications.</li> </ul> <p>Full working mock-ups shall include all power, lighting, utilities, materials and components as described in the Performance Specifications.</p> <p>At any time during the course of the Project, additional mock-ups may be requested by HMQ and shall be provided by Project Co for review by HMQ pursuant to this Schedule 10.</p>	
S-110	Approvals	<p>Provide proof of the following by copy of certification or approval letter, as applicable:</p> <ul style="list-style-type: none"> <li>(a) GTAA Facilities Alteration Permit;</li> <li>(b) Electrical Safety Authority (ESA) Certificate of Inspection;</li> <li>(c) TRCA Permit;</li> <li>(d) Technical Standards and Safety Authority (TSSA) approvals as required</li> </ul>	
S-111	Construction Quality Plan	<p>Provide Construction Quality Plan and updated Construction Quality Plan (at various stages), including any changes to the previous version, if any, and including a statement of how the proposed matter has changed from previous matter reviewed by HMQ.</p>	
S-112	Monthly Progress Reports	<p>Monthly progress reports are to be prepared and submitted in accordance with industry standards. The following is a specific list of items that are required to be included in the monthly progress report:</p> <ul style="list-style-type: none"> <li>(a) Photographs of the construction, including aerial, exterior, interior and main mechanical and electrical components. An average of 10 photographs are to be included in each monthly progress report for both the Station and Guideway;</li> </ul>	

Item #	Title	Description	Format
		<ul style="list-style-type: none"> <li>(b) Project schedule identifying all key milestone dates. Original milestone dates (if revised) are to be provided;</li> <li>(c) Commissioning schedule identifying the dates for all equipment and components including those that will be tested off site;</li> <li>(d) List of work yet to be tendered and awarded;</li> <li>(e) Quantity of construction personnel on site with the projected workforce per month to Final Completion;</li> <li>(f) Block diagram type plans showing completion of work - in colour coded format;</li> <li>(g) List of all site instructions and deficiency reviews completed by Project Co and the status with respect to completion of all deficiencies; and</li> <li>(h) List of all site review reports issued by the Planning, Design &amp; Compliance Consultant and status with respect to completion of all deficiencies noted in the site review reports.</li> </ul>	
S-113	Commissioning Program	Submissions for Commissioning Program to be prepared and submitted in accordance with industry standards and contractual requirements. <ul style="list-style-type: none"> <li>(a) Outline Commissioning Program</li> <li>(b) Draft Final Commissioning Program</li> <li>(c) Final Commissioning Program</li> </ul>	
S-114	Commissioning Reports	Monthly commissioning reports are to be prepared and submitted in accordance with industry standards. Commissioning reports to be submitted no later than 6 months after commencement of construction.	
S-115	Substantial Completion and Final Completion	Detailed submissions for Substantial Completion and Final Completion prepared and submitted in accordance with industry standards and contractual requirements. <ul style="list-style-type: none"> <li>(a) Substantial Completion;</li> <li>(b) Final Completion; and</li> </ul>	

<b>Item #</b>	<b>Title</b>	<b>Description</b>	<b>Format</b>
		(c) Substantial Completion Certificate	
S-116	As-built Documents & Operations Manuals	Detailed log (spreadsheet format) identifying all as-built documents and operations manuals. Detailed log to include as a minimum the following:  (a) Drawing number for all as-built documents with a summary of the changes made during construction;  (b) List of all systems and components included in the operations manuals; and  (c) Any other information HMQ reasonably requires to understand the Works..	
S-117	Fixtures, Furnishings & Equipment	Provide catalogue cuts and, if required, samples of all fixtures, furnishings and equipment required for the Project. Organize a tour to review samples of furniture proposed to be used in the ARL Spur Line and ARL T1 Station. Provide cost of all items including an itemized price for upgrades such as fabrics and other components.	
S-120	1 Year and 3 Year Warranty Review	Prior to the one year post-occupancy date and prior to the expiry of the warranty, as determined by HMQ and Project Co, a detailed report is to be provided identifying any deficiency issues with the ARL Spur Line and ARL T1 Station experienced since occupancy.	
S-121	Testing and Balancing Reports	Final Testing and Balancing Report prepared in accordance with industry standards.	
S-122	Acoustics Report	Written report with Octave Band sound level plots and overall A-weighted sound levels for each space measured. Reconcile with NC levels specified in Space Data Sheets and Specifications.	
S-123	System Test Report	All building system test reports. A complete list of all building system test reports to be provided within 1 month after Commercial Close	
S-124	LEED Requirements	Provide LEED Canada NC (latest version) project checklist provided by the Canada Green Building Council (CaGBC) with all credits annotated as to whether they are: Yes, ? or No. For those credits defined as Yes or ?, provide a description of how that credit will be obtained for this project.	

**1. CHECKING OF STRUCTURAL DESIGN**

**1.1** In accordance with Article 2.2 (c) [General Requirements] of Schedule 15-2 – Design and Construction, for relevant design submissions submitted in accordance with the Review Procedure, Project Co shall submit an Independent Structural Design Check Certificate, in the form provided as Attachment 2 to this Appendix A.

ATTACHMENT 2  
Certificate Form

Certificate Ref. No [ ]

**INDEPENDENT STRUCTURAL DESIGN CHECK CERTIFICATE**

*Defined terms and expressions used in this Certificate have the same meanings as given in the agreement between HMQ and Project Co dated XXX (“the Project Agreement”) relating to the Project.*

*Form of certificate to be used by the Checking Team for certifying the design of structures incorporated in the ARL Spur Line and ARL T1 Station, in accordance with Part 2 of the Design and Construction Specifications to the Project Agreement.*

1. We certify that we have the requisite professional qualifications, skill and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Project Agreement.
  
2. We certify that we have performed an independent check (as required by the Project Agreement for the Guideway Structure) of the Design Data for **[ list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:
  - i. the said Design Data meets performance expectations outlined in the Project Agreement, No. [.....] dated [.....], as amended by the following:  
  
; and
  
  - ii. the design, methodologies and assumptions are consistent with Good Industry Practice.

**SCHEDULE**

**[Include here drawing numbers and titles and reports, calculations, etc.]**

Signed: .....

Checking Team (Principal)

Name: .....



Title: .....

Date: .....

Professional Registration Number: .....

Affix Professional Seal

Signed: .....

Project Co Representative

Name: .....

Date: .....

TOR01: 4579253: v14

**SCHEDULE 11  
DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN**

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**APPENDICES**

- Appendix A Quality Manual
- Appendix B Design Quality Plan
- Appendix C Construction Quality Plan

**PART 1  
DEFINITIONS**

The following definitions shall have the following meanings:

- 1.1 **“Construction Quality Plan or CQP”** means the plan for the quality management of the Works prepared by Project Co in accordance with Appendix C - Construction Quality Plan to this Schedule 11.
- 1.2 **“Corrective Action”** means an action to eliminate the cause of an existing Non-Conformance, defect or other undesirable situation to prevent its recurrence.
- 1.3 **“Design Quality Plan” or “DQP”** means the plan for the quality management of the design of the Parkway prepared by Project Co in accordance with Appendix B - Design Quality Plan to this Schedule 11.
- 1.4 **“External Quality Audit”** means either or both:
  - (a) a second party Quality Audit conducted by parties having an interest in Project Co or the relevant Project Co Party, such as parties with commercial contracts with Project Co or a relevant Project Co Party or customers/clients of Project Co or a relevant Project Co Party; and
  - (b) a third party Quality Audit conducted by an external independent organization such as a certification or registration body.
- 1.5 **“Inspection and Test Plan”** means the plan prepared in accordance with Section 1.5 of Appendix C of this Schedule 11.
- 1.6 **“Internal Quality Audits”** means a first party Quality Audit of Project Co’s or a Project Co Party’s own processes conducted by or on behalf of the relevant organization.
- 1.7 **“ISO 9001 Lead Auditor Course”** means an accredited ISO 9001 course for lead auditors who meet the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors.
- 1.8 **“ISO/IEC”** International Organization for Standardization / International Electrotechnical Commission.
- 1.9 **“Metrolinx”** has the meaning given in the Project Agreement.
- 1.10 **“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.
- 1.11 **“Non-Conformance Report”** means a document issued by either the HMQ Representative or Project Co pursuant to Section 7.1 - Non-Conformance Reporting Process of this Schedule 11 detailing the description of an identified Non-Conformance and the proposed rectification and action taken or to be taken to deal with such Non-Conformance.

- 1.12 **“Non-Conformance Tracking System”** means a system to track Non-Conformance Reports issued by the HMQ Representative or Project Co as set out in Section 7.2 - Non-Conformance Report Tracking System of this Schedule 11.
- 1.13 **“Performance Monitoring Report”** has the meaning given in Part 8 - Performance Reporting of this Schedule 11.
- 1.14 **“Performance Measure”** means specific quality deliverables, identified as PQ x.x, that are identified throughout this Schedule 11.
- 1.15 **“Preventative Action”** means an action to eliminate the cause of a potential Non-Conformance or other undesirable situation in order to prevent its occurrence.
- 1.16 **“QMS 2000 Auditor”** means a quality auditor certified by the International Register of Certified Auditors in the “QMS 2000 Auditor” grade of certification.
- 1.17 **“Quality Audit”** means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
- 1.18 **“Quality Audit Plan”** means Project Co’s audit plan defining the Internal Quality Audits and External Quality Audits that Project Co shall perform or cause to be performed on its own processes and the processes of Project Co Parties.
- 1.19 **“Quality Director”** has the meaning given in Section 3.1 (a) of this Schedule 11.
- 1.20 **“Quality Management Plans”** includes the DQP, CQP and any other quality management plan required for the purposes of undertaking any material and substantial aspect of the Works.
- 1.21 **“Quality Management System”** means the quality management system to be developed and implemented by Project Co in accordance with this Schedule 11.
- 1.22 **“Quality Manager”** means an individual quality manager responsible for each of the Design Quality Plans as described in Section 1.3 of each of the Appendices A to C of this Schedule 11
- 1.23 **“Quality Manual”** means Project Co’s quality manual meeting the requirements set out in Appendix A - Quality Manual to this Schedule 11.
- 1.24 **“Quality Objectives”** means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Management Plan may have its own Quality Objectives which are directly related to the applicable Quality Policy expressed or recorded in the Quality Manual.
- 1.25 **“Quality Policy”** means the overall intentions and direction of Project Co related to quality applicable to Project Co and all Project Co Parties involved in performing the Works which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Manual may have its own Quality Policy which is directly related to applicable Quality Objectives expressed or recorded in the Quality Manual.
- 1.26 **“Quality Records”** has the meaning given in Section 6.8 - Quality Records of this Schedule 11.

- 1.27 “**Surveillance Quality Audits**” means Quality Audits conducted by or on behalf of HMQ as contemplated in Section 5.3 - HMQ’s Quality Audits of this Schedule 11.

**PART 2  
QUALITY MANAGEMENT SYSTEM**

**2.1 Quality Management System**

- (a) Project Co shall develop and implement a Quality Management System in accordance with the requirements of this Schedule. Project Co acknowledges and agrees that Project Co is solely responsible for the quality of the Works and that a comprehensive Quality Management System is critical for the proper and timely completion of the Works.

**2.2 Project Co Responsibilities**

- (a) Project Co is responsible for all quality assurance and quality control activities set out in this Schedule that are required to manage its own processes as well as those of the Project Co Parties. Project Co shall ensure that all aspects of the Project are the subject of a Quality Management System that complies with the provisions of this Schedule, and shall comply with and cause all Project Co Parties to comply with the requirements of such Quality Management System. For greater certainty and without limiting Project Co’s ability to contractually assign responsibilities and obligations to Project Co Parties in accordance with this Project Agreement, Project Co shall not be relieved of any of Project Co’s responsibilities or obligations set out in this Schedule by the assignment of such responsibilities or obligations to Project Co Parties.

**2.3 Quality Management System Requirements**

- (a) The Quality Management System shall, at a minimum, include the Quality Documentation described in Part 6 - Quality Documentation of this Schedule and shall:
- (i) be in general conformance to the requirements and principles of the ISO 9001:2008 Standard and any other applicable standards specified in this Schedule;
  - (ii) adhere to Good Industry Practice; and
  - (iii) comply with all other requirements set out in this Schedule and this Project Agreement.

**2.4 Conformance**

- (a) Specific Requirements
- (i) The Quality Management System shall be in general conformance to ISO 9001:2008.
  - (ii) The scope of the Quality Management System should be clearly defined to address the Works, including traffic management and environmental considerations in respect of the Project.
  - (iii) Project Co shall update its Quality Management System and all Quality Documentation as required to ensure that the Quality Management System and all Quality

Documentation are and at all times remain in general conformance to the ISO 9001:2008 Standard and in full compliance with the requirements of this Schedule.

**2.5 Documentation Deliverables**

(a) Deliverables and Performance Measures

- (i) Without limiting the generality of Section 2.3 - Quality Management System Requirements of this Schedule, Project Co will prepare and submit to the HMQ Representative, by the dates shown in Table 2.5.1, each of the following:

**TABLE 2.5.1**  
Schedule of Plans and Reports (Response Time Measures)

<b>Performance Measure</b>	<b>Deliverable Name</b>	<b>Schedule 11 Specification Reference</b>	<b>Due Date</b>	<b>Submitted under the Review Procedure</b>
n/a	Quality Manual	Appendix A	Submitted 30 days following Financial Close	Yes
n/a	Design Quality Plan	Appendix B	Submitted 45 days following Financial Close	Yes
n/a	Construction Quality Management Plan	Appendix C	Submitted 60 days following Financial Close	Yes
n/a	Other Quality Management Plans (as required by Section 2.5 (b))	Section 2.5	Submitted 45 days following Financial Close	Yes
n/a	Quality Audit Plan	Section 5.1	Submitted 30 days following Financial Close	Yes
PQ5.1	Quality Audit Plan updates	Section 5.1	At twelve monthly intervals following Quality Audit Plan submittal	Yes
PQ6.9	Monthly Quality Management System reports	Section 6.9	By 15th of each month (in respect of previous month)	No
PQ5.2b	Quality Audit reports	Section 5.2	Submitted 14 days following audit completion	No
PQ5.3	Corrective Action plan	Section 5.3	Submitted 20 Business Days following the closing meeting	No

Where specified, the documents listed above shall be submitted to the HMQ Representative for approval in accordance with the Review Procedure.

(b) Specific Requirements

- (i) Project Co shall prepare and submit a Quality Management Plan for the Construction Contractor, and any other contractor engaged by Project Co for the purposes of undertaking any material or substantial aspect of the Works in each case in respect of the activities covered by that party's contract with Project Co and meeting the requirements of the Quality Manual.

(c) Timing of Implementation

- (i) The Quality Manual and all Quality Management Plans must be fully implemented within 60 days from Financial Close. Project Co shall not commence or permit the commencement of any aspect of the Works before those parts of the Quality Documentation that concern such aspect of the Works

(d) Compliance with Quality Management System

- (i) Project Co shall ensure that:

- (A) Project Co complies with the Quality Management System detailed in the Quality Manual;
- (B) the Design Team complies with the Design Quality Plan in connection with its design activities;
- (C) the Construction Contractor complies with the Design Quality Plan, the Construction Quality Management Plan, in connection with all activities under the Design and Construction Contract;
- (D) any other contractor engaged by Project Co complies with the relevant Quality Management Plan prepared and implemented pursuant to Section 2.5(b) - Specific Requirements of this Schedule in connection with the activities covered by that party's contract with Project Co; and
- (E) Project Co shall ensure that any Project Co Party who performs any portion of the Works shall comply with the Quality Management System as it relates to that portion of the Works.

**2.6 Continuous Improvement in Quality Management System**

- (a) Project Co shall implement a program and shall have mechanisms in place, such as management reviews and Quality Audit programs, to allow all identified opportunities for improvement of the effectiveness of the Quality Management System to be recorded, tracked and implemented or closed out.

Project Co shall ensure that all Project Co Parties are aware of the importance of continuous improvement and are actively engaged in its implementation in connection with the performance of the Works.



**PART 3  
QUALITY DIRECTOR**

**3.1 Appointment and General Responsibilities**

At all times throughout the Project Agreement, Project Co shall employ a Quality Director who shall,

- (i) irrespective of such person's other responsibilities, have defined authority for ensuring the establishment and maintenance of the Quality Management System and auditing and reporting on the status of, and compliance with the Quality Management System, including the requirements set forth in Section 3.2(a) of this Schedule; and
  - (ii) shall have experience in a similar quality management representative role for a relevant project of a similar scope and shall have experience in auditing major projects.
- (b) The identity of the Quality Director (and any replacement thereof) and his/her job specification and responsibilities shall be subject to the approval of the HMQ Representative (such approval not to be unreasonably withheld or delayed), and the Quality Director shall be a Key Individual.

**3.2 Specific Responsibilities**

- (a) Without limiting the generality of the foregoing, the job specification and responsibilities of the Quality Director shall include the following:
- (i) developing, implementing and maintaining, and ensuring the effective operation of, the Quality Management System;
  - (ii) initiating management reviews, not less frequently than annually, and taking other actions necessary to ensure the effective operation and continuous improvement of the Quality Management System;
  - (iii) preparing Quality Audit Plans and scheduling and coordinating Internal Quality Audits and External Quality Audits of key processes with the relevant Project Co Parties;
  - (iv) ensuring that all Quality Audits required under Section 5.2 - Project Co's Quality Audits of this Schedule and under the Quality Documentation are conducted, and reporting the findings of such audits to the HMQ Representative;
  - (v) having the authority to immediately stop any work or activity which is not being performed or carried out in accordance with the Quality Documentation applicable thereto;
  - (vi) liaising with the HMQ Representative and acting as the primary representative for Project Co on all matters relating to quality management;
  - (vii) coordinating all matters and issues relating to the certification of the Quality Management System;
  - (viii) preparing and submitting to the HMQ Representative monthly Quality Management System reports;

- (ix) ensuring that relevant Quality Records are retained in accordance with the Quality Management System and the requirements of Section 26 of the Project Agreement;
- (x) developing and implementing a program for Corrective Action and Preventative Action for Non-Conformances; and
- (xi) carrying out any other matters which, in accordance with this Project Agreement, are the responsibility of the Quality Director.
- (xii) Lead other members of quality team such as Quality Control, Assurance, Compliance or Oversight managers.

## **PART 4 TESTING**

### **4.1 Testing Requirements**

- (a) Where Project Co is required by this Project Agreement or any Quality Documentation to carry out any calibration, sample, test or trial, such calibration, sample, test or trial shall be carried out in accordance with the provisions of this Part 4 and the provisions of the relevant Quality Documentation.

### **4.2 Accreditation Standards**

- (a) All on and off Site calibrations, samples, tests and trials shall be carried out by laboratories that are duly accredited for the carrying out of such calibrations, samples, tests and trials.
- (b) Laboratory accreditation shall be in accordance with ISO/IEC 17025, as amended, updated or replaced from time to time, provided that, for specific activities, the HMQ Representative may accept other industry-recognized accreditation in lieu of ISO/IEC 17025, including:
  - (i) concrete and concrete materials: CSA A283-00, “Qualification Code for Concrete Testing Laboratories”, to the appropriate category for the tests being done;
  - (ii) structural steel and welding: CSA W178.1-02, “Certification of Welding Inspection Organizations”, to the level appropriate for the inspection being carried out;
  - (iii) aggregates, bituminous paving mixtures: “Canadian Council of Independent Laboratories”, as appropriate to the work being carried out; and
  - (iv) protective coatings: “National Association of Corrosion Engineers”, as appropriate to the work being carried out.
- (c) Project Co may request the approval of the HMQ Representative to use other industry-recognized accreditations, which approval shall not be unreasonably withheld or delayed if such other accreditation is applicable to the Works for which it is proposed and meets the intent of ISO/IEC 17025.

### **4.3 Remedial Work**

- (a) Project Co shall be responsible at its own cost for any remedial work required as a result of any failure to pass any calibration, sample, test or trial required in accordance with this Project Agreement or any Quality Documentation or as a result of any laboratory not being duly accredited as required by Section 4.2 - Accreditation Standards of this Schedule.

## **PART 5 QUALITY AUDITS AND MONITORING**

### **5.1 Quality Audit Plans**

- (a) Specific Requirements
  - (i) Project Co shall provide a Quality Audit Plan to the HMQ Representative within 30 days after Financial Close and provide an updated Quality Audit Plan at no greater than twelve month intervals thereafter.
  - (ii) The Quality Audit Plan shall detail the Internal Quality Audits and the External Quality Audits that will be conducted by Project Co on its own processes and those of Project Co Parties, and the planned dates of such Quality Audits.
  - (iii) Project Co shall conduct internal Quality Reviews on the project deliverables identified in Appendix A of Schedule 10 – Review Procedure.
- (b) Performance Measures
  - PQ5.1 Project Co shall provide an updated Quality Audit Plan at no greater than twelve month intervals following submission of the its initial Quality Audit Plan

### **5.2 Project Co's Quality Audits**

- (a) General
  - (i) Project Co shall conduct Internal Quality Audits and External Quality Audits of its own processes and those of Project Co Parties in accordance with the requirements of this Schedule, and the Quality Documentation, including the Quality Audit Plan referred to therein. These audits shall be conducted at least annually. The purpose of Project Co's quality auditing process is to confirm that all activities comprising the Works are in compliance with the Quality Manual and Quality Management Plans, to identify all Non-Conformances and necessary Corrective Actions and Preventative Actions and to facilitate continuous improvement.
- (b) Performance Measures
  - PQ5.2a The Quality Director shall schedule Internal Quality Audits and External Quality Audits at least every six months

PQ5.2b Within 14 days of completion of any Quality Audit, Project Co shall document, or cause to be documented; the results of such Quality Audit in an audit report and make such report available to the HMQ Representative upon request.

(c) Specific Requirements

(i) The Quality Director shall schedule Internal Quality Audits and External Quality Audits to ensure that all key processes are reviewed regularly (at least every six months).

(ii) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions and Preventative Actions are carried out in a timely fashion.

(iii) Internal Quality Audits and External Quality Audits shall be scheduled taking into account the status and importance of the processes being audited as well as the results of previous audits.

(iv) Internal and external audits shall be incorporated into the Works Schedule.

**5.3 HMQ's Quality Audits**

(a) General

(i) The HMQ Representative shall, following the submission of the Quality Documentation in accordance with this Schedule, review the Quality Documentation to identify the critical activities and processes described in the Quality Manual and Quality Management Plans on which HMQ's auditing efforts and resources should be directed. HMQ shall determine the frequency of auditing through regular and ongoing review of Project Co's performance and management systems. Procedures and activities relating to the Works that show good audit performance may have the frequency of auditing decreased, while those that show poor performance or increased risk of Non-Conformances may have the frequency of auditing increased. Without limiting Project Co's obligations under Section 26 of the Project Agreement, Project Co shall provide and shall ensure Project Co Parties provide HMQ's auditors with all documentation, records, access, facilities and assistance requested in connection with HMQ's Quality Audit activities.

(b) Performance Measures

PQ5.3 Project Co shall prepare a Corrective Action plan, and, if appropriate, a Preventative Action plan, and submit it to the HMQ Representative within 20 Business Days of the closing meeting referred to in Section 5.3(d)(i)(B) of this Schedule.

(c) Specific Requirements

(i) HMQ reserves the right to conduct follow up reviews on reasonable, but not less than one Business Day's, notice to Project Co to determine if Project Co's Corrective Action plan or Preventative Action plan has been implemented and completed.

(d) Types of Quality Audits

(i) The following two types of Quality Audits may be conducted by, or on behalf of, HMQ in its discretion:

- (A) Surveillance Quality Audits – scheduled or unscheduled field audits conducted on a random basis or on specific areas of interest. The objective of these surveillance audits is to monitor Project Co’s activities involving the Works, including but not limited to workmanship, performance measures and general quality of materials. The HMQ Representative shall, during the performance of Surveillance Quality Audits, record any observations and inform Project Co of any deficiencies that require further evaluation. Any noted deficiencies shall be resolved to the satisfaction of the HMQ Representative through evidence of Project Co’s deficiency evaluation findings or the Non-Conformance process set forth in Part 7 of this Schedule; and
  - (B) Quality Management System Audits – scheduled audits conducted at specific times to assess the performance of and compliance with the Quality Management System. HMQ’s lead auditor shall contact the Quality Director and confirm the scope and schedule of the audit, and schedule for associated audit meetings. At the audit opening meeting with Project Co, HMQ’s lead auditor shall review the audit scope and objectives. HMQ’s auditors shall conduct audit interviews, and document any observations on prepared checklists. At the end of the audit interviews, HMQ’s lead auditor shall evaluate the observations and identify observed procedural or performance Non-Conformance that require Corrective Action. At the audit closing meeting, occurring as soon as reasonably possible after completion of the audit, HMQ’s lead auditor shall discuss the observations and inform Project Co of any observed Non-Conformances and audit recommendations.
- (ii) Additional information relating to HMQ’s Quality Audits with respect to particular Quality Management Plans is identified in the Appendices to this Schedule.

#### **5.4 HMQ Monitoring**

- (a) In addition to carrying out any scheduled and unscheduled External Quality Audits of the Quality Management System (including audits relating to compliance with all Quality Documentation) as provided in Section 5.3 - HMQ’s Quality Audits of this Schedule, the HMQ Representative may, at its discretion, monitor and verify the operation of the Quality Management System by, inter alia, carrying out spot checks and making independent inspections and tests of any Plant or material including any Plant or material which fails any test or is suspected by the HMQ Representative of not complying with the requirements of this Project Agreement.

#### **5.5 Deficient Quality Audits**

- (a) If either:
  - (i) the HMQ Representative reasonably believes that Project Co is failing to conduct Quality Audits of its Quality Management System as required by this Project Agreement in any material respect or if such Quality Audits are not conducted in accordance with the ISO 9001:2008 Standard by personnel competent to conduct such Quality Audits; or
  - (ii) any auditing, monitoring or spot-checks of the Quality Management Systems reveals material deficiencies in the Quality Management System or the implementation thereof,

HMQ may carry out increased levels of External Quality Audits (whether in number, duration or detail) of all or any aspect of the Quality Management System until such time as the HMQ

Representative is reasonably satisfied that none of the circumstances described in this Section 5.5 continue to exist.

### **5.6 Costs of Audits**

- (a) If the HMQ Representative carries out any audit pursuant to Section 5.3 - HMQ's Quality Audits, Section 5.4 - HMQ Monitoring or Section 5.5 - Deficient Quality Audits of this Schedule, and the results of such audit shows any Non-Conformance that materially interferes with the delivery of the Works in accordance with the Output Specifications, Quality Manual and Quality Management Plans, then without limiting any other rights and remedies of HMQ, Project Co shall compensate HMQ for all costs incurred in carrying out such audit (including the relevant administrative expenses of HMQ, including an appropriate sum in respect of general staff costs and overheads). All other audits carried out by the HMQ Representative pursuant to Section 5.3 - HMQ Quality Audits, Section 5.4 - HMQ Monitoring or Section 5.5 - Deficient Quality Audits of this Schedule shall be at HMQ's cost.

### **5.7 Third Party Audits**

- (a) Third party Quality Audits shall be conducted as required under the ISO 9001:2008 Standard on the Quality Management System by an accredited certification agency acceptable to HMQ and Project Co, each acting reasonably, and audit reports in respect of such External Quality Audits initiated by Project Co shall be made available to the HMQ Representative upon request.

## **PART 6 QUALITY DOCUMENTATION**

### **6.1 Principles**

- (a) The minimum requirements and principles which apply to the Quality Documentation are set out in Appendices A to C inclusive to this Schedule. Project Co's Quality Management System shall also comply with the requirements and principles of the ISO 9001:2008 Standard and this Schedule.

### **6.2 ISO Reference Documents**

- (a) Without limiting the requirement of the Quality Management System to comply with the ISO 9001:2008 Standard, Project Co's Quality Management System shall also incorporate the requirements of the following reference documents:
- (i) ISO 9001:2008 Quality Management Systems – Requirements;
  - (ii) ISO 9000:2008 Quality Management Systems – Fundamentals and Vocabulary; and
  - (iii) ISO 19011:2002 Guidelines for Quality and/or Environmental Management Systems Auditing.

### **6.3 Quality Documentation Requirements**

- (a) The minimum documentation requirements for the Quality Management System are:

- (i) the Quality Manual as required pursuant to Section 2.5 - Documentation Deliverables of this Schedule;
- (ii) Quality Management Plans for all aspects of the Initial as required pursuant to Section 2.5 - Documentation Deliverables of this Schedule;
- (iii) that each Quality Management Plan includes quality system procedures and process flow charts documenting who performs the Works, what they do, and what evidence shall be generated that they have performed quality related aspects of the Works correctly;
- (iv) the Quality Audit Plan required pursuant to Section 5.1 - Quality Audit Plans of this Schedule; and
- (v) the Quality Records required pursuant to Section 6.8 - Quality Records of this Schedule.

#### **6.4 Submission of Quality Documentation**

- (a) If any Quality Documentation relies on or incorporates any supporting Quality Documentation then such supporting Quality Documentation or the relevant parts thereof shall (unless the HMQ Representative otherwise agrees) be submitted to the HMQ Representative at the time that the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation is submitted in accordance with the Review Procedure and the contents of such supporting Quality Documentation shall be taken into account in the consideration of the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation in accordance with the Review Procedure. The HMQ Representative may require the amendment of any such supporting Quality Documentation to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of this Schedule.

#### **6.5 Project Co Obligation to Update**

- (a) Project Co shall be responsible for proactively updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in this Project Agreement, to ensure that the Quality Management System and all Quality Documentation are, and at all times remain, in full compliance with the ISO 9001:2008 Standard and the requirements of this Project Agreement. All quality documents should be located centrally online and accessible by all project personnel as required.

#### **6.6 Changes to Quality Documentation**

- (a) Project Co shall submit to the HMQ Representative in accordance with the Review Procedure any proposed changes or additions to or revisions of any of the Quality Documentation.
- (b) If Project Co does not propose any change, pursuant to Section 6.6 (a) of this Schedule, which HMQ determines to be required then HMQ may propose such change and it shall be dealt with as though it had been proposed by Project Co pursuant to Section 6.6 (a) of this Schedule and shall not be treated as a Variation. Any dispute between the Parties in respect of any such change shall be resolved in accordance with the Dispute Resolution Procedure.

#### **6.7 Amendment of Quality Documentation**

- (a) If there is no unresolved objection by the HMQ Representative under the Review Procedure to a part of the Quality Documentation pursuant to Section 6.4 - Submission of Quality

Documentation of this Schedule or to a change, addition or revision proposed pursuant to Section 6.6(a) - Changes to Quality Documentation of this Schedule, then the Quality Documentation shall be amended to incorporate such part, change, addition or revision.

### **6.8 Quality Records**

- (a) Project Co shall establish and maintain complete and accurate quality management records (the “Quality Records”).
- (b) The Quality Records shall provide objective evidence of conformance with all requirements of this Project Agreement, compliance with the ISO 9001:2008 Standard and the effective operation of the Quality Management System.
- (c) The Quality Records maintained by Project Co shall include records evidencing general conformity to the ISO 14001:2004 Standard.

### **6.9 Quality Management System Reports**

- (a) Performance Measures

PQ6.9 For each month during the life of the Project Agreement, Project Co shall prepare, and submit to the HMQ Representative within 15 Business Days of the start of the following month, a comprehensive Quality Management System report.

At each occurrence of Project Co failing to submit a Quality Management System report within the required time period will result in Project Co being assigned one Quality Failure Point each day until the failure is rectified.

- (b) Specific Requirements

- (i) The monthly Quality Management System report shall address all quality management activities under each of the Quality Management Plans for that month and any outstanding quality issues from prior months.
- (ii) The monthly Quality Management System reports shall, at a minimum, include the following information separately identified for the Quality Manual and for each Quality Management Plan:
  - (A) a Non-Conformance Report log summarizing all Non-Conformance Reports opened, closed, or still open from the previous report, in the relevant month and providing the following: “date open”, “date closed”, “status” (open, pending, closed), “disposition” (repair, rework, reject) and “description of status” which describes the current status of the Non-Conformance Report and if closed, when and how it was closed;
  - (B) Corrective Action and Preventative Action logs providing details of the Corrective Actions and Preventative Actions performed during the month and their close-out status;
  - (C) a summary of any inspection and testing activities conducted during the month;



- (D) Internal Quality Audits and External Quality Audits performed during the month and a four month look-ahead schedule for planned future Quality Audits;
  - (E) any continual improvement initiatives taken during the month;
  - (F) any other information required to be included in the monthly Quality Management System reports pursuant to any of the Appendices to this Schedule or the terms of the relevant Quality Management Plan; and
  - (G) any changes made to the Quality Management System or the Quality Documentation in compliance with the provisions of this Project Agreement.
- (c) Project Co's monthly Quality Management System reports shall include a summary of all environmental quality management activities during each month, including:
- (i) monthly environmental reports, as required pursuant to Section 26 of Project Agreement
  - (ii) copies of any and all environmental Permits, Licences, Approvals and Agreements obtained since the previous reporting period, as well as steps taken to obtain any outstanding required environmental Permits, Licences, Approvals and Agreements and the results thereof; and
  - (iii) steps taken to implement, comply with and satisfy Project Co's environmental obligations including compliance with Applicable Law and the other environmental requirements contained in the Project Agreement.

#### **6.10 Additional Information**

- (a) Notwithstanding any other provision of this Schedule, Project Co shall provide the HMQ Representative with such information as the HMQ Representative may request from time to time to demonstrate compliance with this Schedule.

## **PART 7 NON-CONFORMANCES**

### **7.1 Non-Conformance Reporting Process**

- (a) The Non-Conformance reporting process, from initial creation through to closeout of a Non-Conformance, shall follow the process outlined below:
- (i) If Project Co or HMQ discovers a Non-Conformance, it shall initiate a Non-Conformance Report in accordance with the ISO 9001:2008 Standard as follows:
    - (A) Project Co initiated Non-Conformance Reports - Project Co shall provide a Non-Conformance Report identifying the Non-Conformance to the HMQ Representative within 2 Business Days of discovery of the Non-Conformance; or
    - (B) HMQ initiated Non-Conformance Reports - If at any time HMQ is notified, or otherwise becomes aware, that there is any Non-Conformance relating to the

Works, the HMQ Representative may issue a Non-Conformance Report, without prejudice to any other right or remedy available to HMQ.

- (ii) A Non-Conformance Report initiated by either Party is issued to the Quality Director, thereby activating the Non-Conformance Report. The date of issue shall be recorded denoting the commencement of the time period for which the Non-Conformance Report has an ‘open’ status.
- (iii) The Quality Director shall in response to the Non-Conformance Report describe a disposition of the Non-Conformance and a Corrective Action in accordance with the ISO 9001:2008 Standard. Acceptable responses are set out in Table 7.1 for various scenarios.

**TABLE 7.1**

<b>Non-Conformance Status</b>	<b>Disposition</b>	<b>Corrective Action</b>
Physical rectification has been undertaken	Provide confirmation that the rectification work has remedied the Non-Conformance	Describe any improvements to delivery process
Physical rectification is proposed	Provide a plan committing to scope and timing of rectification works	Describe any improvements to delivery process
No physical rectification is proposed	Objection	N/A

- (iv) Project Co shall investigate and respond to all Non-Conformance Reports.
- (v) Project Co may object to the issuance of any Non-Conformance Report by the HMQ Representative. If such objection has not been resolved by mutual agreement between the HMQ Representative and Project Co within 5 Business Days of delivery by Project Co to the HMQ Representative of a notice of the objection, then either Party may refer the matter to the Dispute Resolution Procedure for determination.
- (vi) If Project Co fails to object to the issue by the HMQ Representative of a Non-Conformance Report within 5 Business Days, Project Co is deemed to have accepted that Non-Conformance Report.
- (vii) If there is no outstanding notice of objection, and an acceptable disposition and Corrective Action are documented, the Quality Director records the date denoting the end of the time period for which the Non-Conformance Report has an ‘open’ status. The Quality Director shall then change the Non-Conformance Report status to ‘closed’ and shall provide a copy of the Non-Conformance Report to the HMQ Representative within 2 Business Days thereafter.

**7.2 Non-Conformance Report Tracking System**

- (a) Project Co shall implement and maintain a Non-Conformance Tracking System to monitor the status of all Non-Conformance Reports initiated by HMQ and Project Co.

- (b) The Non-Conformance Tracking System shall be fully operating, with the following minimum requirements, within 90 days from Financial Close:
- (i) comprise a single repository containing both Project Co and HMQ initiated Non-Conformance Reports;
  - (ii) have the ability to attach supporting material such as photos and documents;
  - (iii) provide live access to the current Non-Conformance Report status to both Project Co and HMQ;
  - (iv) produce monthly summary reports for delivery to the HMQ Representative of “open” Non-Conformance Reports.

### **7.3 Performance Measures**

PQ7.3 Project Co shall resolve Non-Conformances within the response time specified on the Non-Conformance Reports.

Failure to resolve a Non-Conformance within the time specified on the Non-Conformance Report will result in Project Co being assigned one Quality Failure Point.

### **7.4 Non-Conformance Records**

- (a) In addition to the maintenance of the Non-Conformance Tracking System under Section 7.2 - Non-Conformance Report Tracking System of this Schedule, Project Co shall maintain and make available to HMQ upon request, records of:
- (i) each Non-Conformance;
  - (ii) the reference numbers of all Non-Conformance Reports;
  - (iii) a description of all Non-Conformance Reports;
  - (iv) the proposed actions by Project Co to rectify each Non-Conformance;
  - (v) the date and time at which each Non-Conformance was identified; and
  - (vi) the date and time at which a Non-Conformance specified in a Non-Conformance Report was rectified.

## **PART 8 PERFORMANCE REPORTING**

### **8.1 Obligation to Report**

Project Co shall prepare a monthly report (a “Performance Monitoring Report”). The Performance Monitoring Report shall be submitted to the HMQ Representative within 5 Business Days following the end of each month.

**APPENDIX A  
QUALITY MANUAL**

**1.0 QUALITY MANUAL**

- 1.1 Project Co shall provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Works. The Quality Manual shall establish the Quality Policy and Quality Objectives for all aspects of the Works and, in accordance with the requirements of the ISO 9001:2008 Standard, shall describe the processes that shall be established, implemented, controlled, and continually improved to achieve the established Quality Objectives.
- 1.2 The Quality Manual shall describe the quality assurance and quality control system and procedures that Project Co will apply through all phases of the Work, including the design phases. The Manual must include, at a minimum:
  - (a) an outline of the duties, responsibilities, and authority of the QA/QC Managers and other key personnel involved in either design or construction QA/QC activities;
- 1.3 The Quality Objectives shall be measurable, consistent with the Quality Policy and linked to meeting the needs and performance expectations of HMQ in respect of the Project. The Quality Management System described in the Quality Manual shall include all the activities required to achieve these Quality Objectives, including project controls such as scope, cost, schedule and general document control management activities. All of these activities shall be subject to Internal Quality Audits and External Quality Audits.
- 1.4 The Quality Manual shall describe the Project Co Parties involved in performing the Works and how key management activities (such as Project control, traffic management and management of Project design, Construction Activities, and environmental matters) shall interface with each other. The Quality Manual shall also provide the organization chart identifying the authority and responsibilities of all Key Individuals and other key personnel involved with the aforementioned aspects of the Project. The Quality Manual shall also show how the various levels of Quality Management System documentation are linked together.
- 1.5 The Quality Manual shall clearly define the reporting function and authority of Project Co's Quality Director who shall liaise with the HMQ Representative and act as the single point representative of Project Co for all matters relating to quality management.

**APPENDIX B  
DESIGN QUALITY PLAN**

**1.0 DESIGN QUALITY PLAN**

- 1.1 Project Co shall provide a comprehensive Design Quality Plan (“DQP”) that describes how it intends to manage the design processes for the Project in accordance with the ISO 9001:2008 Standard, its Quality Manual and the provisions of this Project Agreement. The DQP is to apply throughout the Works and for rehabilitation work.
- 1.2 The DQP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for design management and their relationship (see Appendix 9) with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for design management and other engineering and construction management disciplines.
- 1.3 Project Co shall appoint a Quality Manager who shall be responsible for the DQP and shall:
- (a) have experience in a similar role on a successful project of similar scope
  - (b) report to the Quality Director.
- 1.4 The DQP shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
- (a) Quality training
  - (b) design input and output review;
  - (c) design verification to ensure that design input requirements have been met;
  - (d) design validation to ensure that the completed Parkway is capable of meeting its intended use;
  - (e) design changes;
  - (f) quality assessment and procurement of Project Co Parties responsible for design;
  - (g) External Quality Audits of Project Co Parties responsible for design;
  - (h) Internal Quality Audits;
  - (i) Corrective Actions, Preventative Actions and opportunities for improvement;
  - (j) document management; and
  - (k) control of Quality Records.
  - (l) CAD standards

- (m) Checking and Review Process
- (n) Shop Drawings Review
- (o) Record Drawings submission
- (p) Submission of soft copy of all QA/QC documents at project closeout.

The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

**APPENDIX C  
CONSTRUCTION QUALITY PLAN**

**1.0 CONSTRUCTION QUALITY PLAN**

- 1.1 Project Co shall provide a comprehensive Construction Quality Plan (“CQP”) that describes how it intends to manage the Construction Activities in accordance with the ISO 9001:2008 Standard, its Quality Manual and the provisions of this Project Agreement. The CQP shall also describe how it intends to manage the environmental components of the Project in accordance with the ISO 14001:2004 Standard, its Quality Manual and the provisions of this Project Agreement. The CQP is to apply throughout the life of the Project Agreement.
- 1.2 The CQP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for construction management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for construction management and other disciplines such as design management, environmental management and traffic management.
- 1.3 Project Co shall appoint a Construction Quality Manager who shall be responsible for the CQP and shall:
- (a) have experience in a similar role on a successful project of similar scope and
  - (b) report to the Quality Director.
- 1.4 The CQP shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
- (a) construction safety audits;
  - (b) inspection, testing and monitoring;
  - (c) materials identification and traceability;
  - (d) quality assessment and procurement of Project Co Parties responsible for construction;
  - (e) satisfying and ensuring compliance with Project Co’s environmental obligations, including compliance with the Environmental Approvals;
  - (f) obtaining and maintaining applicable Permits, Licences, Approvals and Agreements;
  - (g) environmental monitoring and reporting;
  - (h) environmental incident reporting and tracking;
  - (i) external Quality Audits of Project Co Parties responsible for construction;
  - (j) internal Quality Audits;

- (k) control of nonconforming product;
- (l) corrective Actions, Preventative Actions and opportunities for improvement;
- (m) document management; and
- (n) control of Quality Records.

The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

1.5 The CQP shall also include or reference an Inspection and Test Plan, which if referenced, shall also be submitted through the Review Procedure, detailing all major on and off Site inspection and test activities for Works performed by Project Co and the Project Co Parties. The Inspection and Test Plan shall, at a minimum, include:

- (a) a description of the inspection, testing and monitoring activity;
- (b) frequency of inspections, tests and monitoring;
- (c) reference to standards, codes, specifications, and acceptance criteria;
- (d) reports and checklists required;
- (e) personnel responsible for inspection, testing and monitoring activity;
- (f) quality assurance review, witness and hold points; and
- (g) description and frequency of geotechnical instrumentation monitoring and adherence to acceptance criteria.

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**SCHEDULE 12**

**PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR**

**THIS GUARANTEE** is made as of the 15<sup>th</sup> day of December, 2011.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”)

and

**AIRLINX TRANSIT PARTNERS JV, an unincorporated joint venture between AECON CONSTRUCTION AND MATERIALS LIMITED and DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

(“**Construction Guarantor**”)

**WHEREAS:**

- A. **HMQ and AirLINX Transit Partners Inc. (“Project Co”)** have entered into a project agreement dated as of the 15<sup>th</sup> day of December, 2011 (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 **HMQ** to enter the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to **HMQ**, 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, 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 from Project Agreement

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**Confidential**

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) “Members” means (i) Aecon Construction and Materials Limited and (ii) Dufferin Construction Company, a division of Holcim (Canada) Inc.
- (c) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (d) For the purpose of this Performance Guarantee of Construction Guarantor only, the term “Design and Construction Work” shall include the Project Co Representations and Warranties set out in Section 6.1(a) of the Project Agreement, except Section 6.1(a)(xx), which Section shall remain excluded from the definition of the “Design and Construction Work”, and shall include Section 34.1(a)(iv) of the Project Agreement, and provided that, for the purposes only of this Performance Guarantee of Construction Guarantor:
  - (i) in Section 6.1(a)(vii) the term “Project Co Event of Default” shall be read as “Project Co Construction Event of Default” as that term is defined in Schedule 1 to the Project Agreement.

## **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 HMQ, 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 (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 under Section 8.4(a) or with respect to Financing or any provision other than the Design and Construction Work.
- (b) Notwithstanding any other provision of this Guarantee, the Construction Guarantor’s undertakings and obligations are derivative of and not in excess of Project Co’s obligations under the Project Agreement and the 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 arise out of or are a result of an HMQ Event of Default as set out in Section 35.1(a) of the Project Agreement.

## **2.2 General Provisions Relating to the Guarantee**

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by 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 the Ownership of Project Co or Construction Guarantor;
  - (iv) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
  - (v) any change in the financial condition of Project Co or Construction Guarantor;
  - (vi) any Project Co Event of Default described in Section 34.1(a)(i) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;

- (vii) 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;
  - (viii) 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;
  - (ix) the exercise of any rights under the Lending Agreements, including the right of the 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;
  - (x) the assignment by HMQ in accordance with the provisions of Section 58.2 of the Project Agreement; or
  - (xi) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against 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) HMQ 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 HMQ 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 HMQ 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 HMQ 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, HMQ 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 HMQ may see fit and HMQ 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 HMQ 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 HMQ 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 HMQ 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 HMQ that as of the date of this Guarantee:
- (i) each of its Members is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the in the jurisdiction of its organization 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 Implementing Agreements to which it is a party and to perform its obligations hereunder and thereunder;
  - (ii) each of its Members has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Implementing Agreements 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 Implementing Agreements 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 of any of its Members in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Implementing Agreements 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 Implementing Agreements (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by each of the Members and constitute legal, valid, and binding obligations of each of the Members, enforceable against each of the Members 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 each of the Members of this Guarantee and the Implementing Agreements 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 either of the Members;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, instrument, agreement or understanding to which either of the Members is a party or by which it or any of its properties or assets is bound or affected;
- (vi) Project Co is jointly owned by the Members;
- (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 Implementing Agreements 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, facsimile or by hand, as follows:

If to Construction Guarantor:

[REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

with a copy to:

[REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to HMQ:

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5J 2W3

Fax: [REDACTED]  
Attn: [REDACTED]

with a copy to:

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

Fax.: [REDACTED]  
Attn: [REDACTED]

#### **4.2 Facsimile**

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

Where any Notice is required to be served on HMQ, the obligation to serve such Notice shall be fulfilled by serving it on HMQ in accordance with the provisions of this 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, the Contract Documents and the other Implementing Agreements, 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, HMQ 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 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 Implementing Agreements.

### **5.8 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.

### **5.9 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.

### **5.10 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.

### **5.11 Proof of Authority**

HMQ 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 HMQ or Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind HMQ or Construction Guarantor, as applicable.

### **5.12 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 the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any party providing its signature in faxed form shall

promptly forward to the other Party an original signed copy of this Guarantee which was so faxed.

**5.13 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.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

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

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

Per:

\_\_\_\_\_  
Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

Per:

\_\_\_\_\_  
Name: **[REDACTED]**

Title: **[REDACTED]**

Per:

\_\_\_\_\_  
Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR PERFORMANCE GUARANTEE OF CONSTRUCTION  
GUARANTOR]**

**AIRLINX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC. BY:**

**AECON CONSTRUCTION AND MATERIALS LIMITED**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR]**

TOR01: 4543100: v18

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

**[REDACTED]**

TOR01: 4540712: v13

## **SCHEDULE 14**

### **OUTLINE COMMISSIONING PROGRAM**

#### **1. APPLICABLE STANDARDS**

- 1.1. Project Co shall plan, schedule, coordinate and execute the commissioning of each item of equipment and building system provided as part of the Works in accordance with the currently applicable versions of the following standards:
  - (a) ASHRAE Applications Handbook, Building Commissioning;
  - (b) ASHRAE Guidelines 1 – The HVAC Commissioning Process;
  - (c) InterNational Electrical Testing Association (NETA); and
  - (d) Schedule 15, Part 3, Article 5 – Sustainability.
  - (e) NFPA 13-94 – Installation of Sprinkler Systems.
  - (f) NFPA 14-94 – Installation of Standpipes and Hose Systems.

#### **2. PROJECT CO COMMISSIONING COORDINATOR**

- 2.1. Project Co shall appoint a commissioning coordinator (the “**Project Co Commissioning Coordinator**”).
- 2.2. The Project Co Commissioning Coordinator shall be an individual, company or agency having a minimum of five years experience in the design or commissioning of mechanical and electrical systems in similar facilities to the ARL Spur Line and ARL T1 Station shall be licensed or authorized by the Association of Professional Engineers of the Province of Ontario and shall be familiar with and knowledgeable about each of the standards listed in Section 1.1 of this Schedule 14.

#### **3. COMMISSIONING PARAMETERS**

- 3.1. The Project Co Commissioning Coordinator shall convene a meeting of the commissioning team to set commissioning parameters, designate the responsibilities of the various parties and establish the documentation requirements for the Works and the Project Co Commissioning.
- 3.2. Project Co shall incorporate the Commissioning Schedule into the Works Schedule.
- 3.3. The Project Co Commissioning Coordinator shall submit monthly reports to the Works Committee regarding the progress of the Project Co Commissioning.



- 3.4. Project Co is responsible for the supply, installation, start-up, testing, adjustment and cleaning of each item of equipment and building system provided as part of the Works. Where applicable, commissioning shall be completed in accordance with the equipment vendor's guidance.
- 3.5. Project Co shall verify that:
- (i) the building systems have been installed in accordance with the requirements of this Project Agreement;
  - (ii) the building systems performance meets the requirements of the Design Intent and this Project Agreement;
  - (iii) training has been provided and meets the requirements of this Project Agreement;
  - (iv) As-Built Drawings and operating and maintenance manuals have been provided in accordance with this Project Agreement;

#### **4. COMMISSIONING TEAM**

- 4.1. The commissioning team shall be comprised of:
- (a) a representative of Project Co;
  - (b) a representative of HMQ;
  - (c) the Project Co Commissioning Coordinator;
  - (d) the HMQ Commissioning Agent;
  - (e) representatives of the Design Team, the Construction Contractor and the Project Co Parties;
  - (f) representatives of the Design Compliance Consultant; and
  - (g) representatives of the relevant equipment manufacturers or service providers, as required.
  - (h) representatives of the testing agencies, such as the Balancing Contractor, the Electrical Testing Contractor and the Fire Alarm System Testing Contractor.
- 4.2. Project Co and each of the Project Co Parties shall assign an individual from each relevant trade to the commissioning team and shall ensure that representatives of the relevant equipment manufacturers are present during the relevant Project Co Commissioning.

4.3. Project Co shall provide all necessary labour, materials, equipment, testing apparatus and incidentals necessary to completely start-up, verify, performance test and commission each item of equipment and building system provided as part of the Works.

## **5. COMMISSIONING PROCEDURES**

5.1. Project Co shall ensure that all regulation and code references in the contract documents are current and applicable.

5.2. Project Co and the Project Co Commissioning Coordinator shall plan, prepare documentation and execute the commissioning process and procedures.

5.3. Project Co Commissioning shall be sub-divided into the design stage, the construction stage, the performance verification stage, the document stage, the training stage, the acceptance stage and the post construction stage. Project Co shall ensure that each of the requirements set out in Sections 5.4, 5.5, 5.6, 5.7, 5.8, 5.9 and 5.10 of this Schedule 14 are completed.

### **5.4. THE DESIGN STAGE:**

- (a) Project Co shall prepare the Commissioning Brief which shall include a schematic design of the mechanical and electrical systems, a written Design Intent which shall include the design criteria and assumptions, and a reference to all standards and codes applicable to the Project.
- (b) Project Co shall prepare the commissioning specifications for the general, mechanical, and electrical divisions. The plan shall identify Project Co's commissioning process, responsibilities, testing procedures, reporting procedures and co-ordination responsibilities to the Commissioning Team.
- (c) Project Co shall prepare a commissioning plan (the "**Commissioning Plan**") which shall contain the following:
  - A. a listing of the members of the Commissioning Team and the name of each subcontractor testing agency and manufacturer project leader;
  - B. the responsibilities of the Commissioning Team and its members;
  - C. a summary of the Project Co Commissioning process;
  - D. the reporting methodology for Project Co Commissioning;
  - E. the Commissioning Schedule, including an associated commissioning schedule developed by each Subcontractor;
  - F. an explanation of the commissioning Static Tests and Start Up Tests with reference to the specification sections which identify the

- requirements of each test, including a listing of each of the tests and sample forms;
- G. an explanation of the verification process for installation inspections by Project Co and the documentation to be completed;
  - H. a summary of the systems Design Intent and data to be provided by Subcontractors and an explanation of the performance testing procedures to be used to verify the Design Intent data;
  - I. the training requirements and a training schedule;
  - J. an explanation of the documentation requirements that shall be included in the O&M manuals, commissioning manuals, System Operation Manuals, and As-Built Drawings;
  - K. the Commissioning Progress Management Forms and the summary form to be used for the monthly reports;
  - L. identification of the requirements of commissioning during the post construction period. Identify the Seasonal Performance Testing process; and
  - M. the Performance Testing and the summary form to be used for the monthly reports.
- (d) The Commissioning Plan shall be reviewed by the Commissioning Team during the design stage. The Commissioning Plan shall be updated during the commissioning process to include changes as they occur. Project Co shall complete the Commissioning Plan after the post construction stage and submit the Commissioning Plan to the Commissioning Team for a final review.
- (e) The Project Co Commissioning Coordinator shall review the documents provided during the design stage and shall report that all the commissioning requirements have been included on the drawings and in the specifications.

#### 5.5. THE CONSTRUCTION STAGE:

- (a) Project Co shall prepare construction drawings and specifications. The documents shall include all changes made during the pricing and negotiation stages. The Project Co Commissioning Coordinator shall review the construction drawings and specifications to verify that the changes have been included and that all of the commissioning requirements have been clearly identified.
- (b) The Project Co Commissioning Coordinator shall implement the Commissioning Plan and lead the Commissioning Team through the start up, verification,

Performance Testing, training, preparing documentation, and post construction commissioning.

- (c) The Project Co Commissioning Coordinator shall prepare the static testing forms and procedures identified in the specifications. Static testing shall be conducted on all piping systems, ductwork systems, electrical cables and bus ducts, and all electrical switchboards and panels.
- (d) The Project Co Commissioning Coordinator shall prepare the start-up testing forms and procedures identified in the specifications. Start-up testing shall be conducted on all equipment.
- (e) The Project Co Commissioning Coordinator shall prepare the Commissioning Progress Management Forms. There shall be a form for each building system which shall identify the equipment associated with that system and the commissioning process to be completed by Project Co. The Project Co Commissioning Coordinator shall provide monthly reports to identify the progress of commissioning for each system.
- (f) The Project Co Commissioning Coordinator shall include the static and start up testing in the Commissioning Schedule. The Project Co Commissioning Coordinator shall identify co-ordination required between trades and equipment manufacturers. The Project Co Commissioning Coordinator shall update the Commissioning Schedule throughout the commissioning process.
- (g) The Project Co Commissioning Coordinator shall update the Commissioning Progress Management Forms to ensure all systems and equipment for systems has been identified.
- (h) The Project Co Commissioning Coordinator shall witness Static Tests and Start Up Tests and complete the testing forms. As tests are completed the Commissioning Progress Management Forms shall be updated. Copies of the completed test forms and updated Commissioning Progress Management Forms shall be forwarded to the Commissioning Team on a monthly basis.
- (i) The Project Co Commissioning Coordinator shall attend the construction meetings and review the progress of commissioning. During the performance verification stage separate meetings shall be scheduled, chaired by the Project Co Commissioning Coordinator.
- (j) The Project Co Commissioning Coordinator shall review the shop drawings that have been reviewed by the Subcontractors. The review shall identify any commissioning, Design Intent, operational or maintenance issues. The Project Co Commissioning Coordinator shall prepare a report and submit such report to the Commissioning Team for review.

- (k) The Project Co Commissioning Coordinator shall review all site instructions and change notices and update the Commissioning Plan, test forms, Commissioning Progress Management Forms and the test procedures, as necessary, to include these changes. Updated documentation shall be submitted to the Commissioning Team for review.
- (l) The Project Co Commissioning Coordinator and Subcontractors shall inspect the installation of equipment, piping, ductwork, electrical wiring and bus ducts to verify that the installations meet the requirements of this Project Agreement and the manufacturer's instructions. The Project Co Commissioning Coordinator shall prepare verification forms for each system and complete these forms during the survey. The Project Co Commissioning Coordinator shall submit a report to the Commissioning Team.
- (m) Project Co shall prepare the building and equipment for continual operation of systems and equipment. The associated areas of the building must be clean to allow air handling units to operate without contaminating duct work.
- (n) Project Co shall prepare a maintenance plan for any equipment that has been started and will remain operational during the next stage in the commissioning process. The maintenance plan shall include the manufacturer's requirements.
- (o) Project Co shall provide all equipment receipt check sheets to verify that the equipment delivered to the Site is as specified and approved by the shop drawings.
- (p) Project Co shall provide pass/fail criteria for all mechanical and electrical specifications and/or NETA specifications.

#### 5.6. PERFORMANCE VERIFICATION STAGE

- (a) Project Co shall include the performance verification requirements in the Commissioning Schedule. The detailed requirements of the performance verification process shall be included in the Commissioning Plan.
- (b) The Project Co Commissioning Coordinator shall prepare the Performance Testing procedures and forms to be used. The design data, extracted from the Design Intent documents, shall be identified.
- (c) The air and water Balancing Contractor shall complete the balancing process identified in the specification. The Project Co Commissioning Coordinator shall co-ordinate with the Balancing Contractor, the mechanical subcontractor, and manufacturers during the balancing process. The Balancing Contractor shall issue reports during the process and at the completion of the process. The Project Co Commissioning Coordinator and the mechanical consultant shall verify that

the balancing measurements meet the requirements of the Design Intent and this Project Agreement.

- (d) The Project Co Commissioning Coordinator shall verify the operation of every BAS device and program from the device to the operator workstation. Every control point in the BAS system shall be verified.
- (e) The Project Co Commissioning Coordinator shall lead the Commissioning Team to verify the operation of the complete mechanical system. Utilizing the BAS the Commissioning Team shall verify the performance of the mechanical system at the equipment through to each area within the building. Discrepancy with recorded results and the Design Intent shall be documented. Project Co shall rectify the problem creating the discrepancy and the Commissioning Team shall retest the system.
- (f) The Electrical Testing Contractor shall conduct tests on the complete electrical system, normal and emergency power, and facility wiring. When all tests have been completed and all mechanical equipment and building systems are operating the electrical distribution systems shall be tested for harmonics and phase balance. Bus duct and switchboards shall be infrared tested. Prepare test forms and issue completed forms to the Commissioning Team. The Project Co Commissioning Coordinator shall witness the electrical system tests.
- (g) The Project Co Commissioning Coordinator shall lead the Commissioning Team in verifying the operation of each electrical system, including but not limited to the normal and emergency power, fire alarm and security systems. This shall include every device operation and operational programming. The Project Co Commissioning Coordinator shall prepare test forms and issue completed forms to the Commissioning Team
- (h) The Fire Alarm Testing Contractor shall verify the operation of the life safety system. The Project Co Commissioning Coordinator shall coordinate with the Governmental Authority having jurisdiction over fire inspection and shall lead the Commissioning Team in the final verification. The Project Co Commissioning Coordinator shall prepare test forms and issue completed forms to the Commissioning Team.

#### 5.7. DOCUMENTATION STAGE:

- (a) Project Co shall prepare the operating and maintenance manuals ("**O&M Manuals**") documenting the routine and preventative maintenance program in accordance with the specifications. The Project Co Commissioning Coordinator shall review the O&M Manuals to ensure all of the commissioning requirements have been addressed.

- (b) The Project Co Commissioning Coordinator shall ensure the documentation of the protocols for the performance of emergency repairs in such a way as to prevent a material threat to the flow of passengers or vehicular traffic to and from the ARL T1 Station, Terminal 1 or the Airport, the operation of the APM Service or the safety or security of the ARL T1 Station, Terminal 1, the Airport or the Persons using such facilities;
- (c) The Project Co Commissioning Coordinator shall assemble the commissioning documentation and include it in a Commissioning Manual in accordance with Sections 6.6, 6.7, and 6.8 of this Schedule 14. Project Co shall provide separate manuals for the mechanical and electrical divisions.
- (d) The Project Co Commissioning Coordinator shall prepare a Systems Operation Manual for the mechanical and electrical divisions. These manuals shall be subdivided into systems (i.e. the heating system, the emergency system, etc.). Each system shall be formatted with a description of the Design Intent of the system, location, areas in the building of the system services, how the system operates, and all emergency procedures.
- (e) The Project Co Commissioning Coordinator shall prepare a Re-Commissioning Manual for the electrical and mechanical systems. These manuals shall describe the re-commissioning process required for each system, and include the performance data that is required to be achieved. Each Re-Commissioning Manual shall provide cross references to the As-Built Drawings, shop drawings, balancing reports, and the Systems Operation Manuals.
- (f) The Project Co Commissioning Coordinator shall update the Commissioning Plan during the commissioning process. The final version shall be provided at the end of the performance verification stage and updated at the end of the post construction stage.
- (g) Project Co shall prepare As-Built Drawings as required by the Project Agreement. The Project Co Commissioning Coordinator shall provide Project Co with any data and information obtained during the commissioning process that should be included in the As-Built Drawings.

#### 5.8. TRAINING OF METROLINX OCCUPANTS AND GTAA OCCUPANTS

- (a) Project Co shall provide a training schedule and agenda for each training session. Operational and maintenance training shall be provided for all equipment and systems.
- (b) The Project Co Commissioning Coordinator shall co-ordinate with the Metrolinx Occupants and GTAA Occupants to schedule the training and to review the training agendas.

- (c) The Project Co Commissioning Coordinator shall attend every training session to ensure the agenda is maintained and that quality training is provided. One training session for each category shall be video recorded in digital format. The disks shall be submitted to HMQ and labelled accordingly.
- (d) Project Co's design consultants shall provide an overview of the building systems, including an explanation for why types of systems and equipment were selected, identification of the Design Intent and discussion of the operating procedures required to maintain the Design Intent. These sessions shall be video recorded in digital format.
- (e) The training sessions for equipment shall be conducted at the location of the equipment.
- (f) The training sessions for systems shall be conducted at the systems operating stations (workstations).

**5.9. THE COMMISSIONING PROCESS ACCEPTANCE STAGE:**

- (a) The Project Co Commissioning Coordinator shall provide assistance to the Project Co during the acceptance stage of the Project, including:
  - A. verification that the commissioning processes are complete;
  - B. verification that the commissioning documentation has been provided;
  - C. verification that the performance of the systems meets the Design Intent requirements;
  - D. verification that training has been provided to the requirements of the contract documents; and
  - E. verification that all deficiencies have been completed.

**5.10. POST CONSTRUCTION COMMISSIONING STAGE**

- (a) The post construction commissioning stage shall commence 1 year after the date of Substantial Completion. Project Co shall develop a schedule for the commissioning process to be conducted during the post construction commissioning stage.
- (b) The commissioning process conducted in this stage shall include: Seasonal Performance Testing, re-testing of warranty repairs, continuation of operator training, and implementation of a Quality Control Plan.



- (c) The Project Co Commissioning Coordinator shall develop a Seasonal Performance Testing plan. The mechanical systems shall be tested over the four seasons to verify that the systems are providing the Design Intent performance during each season. The normal and emergency power electrical systems shall be tested during the summer and winter seasons to verify the performance of the systems during these seasons. The electrical building systems including but not limited to the, lighting control system, security and fire alarm systems, etc., shall be tested 10 months after Substantial Completion. Performance Testing forms shall be developed and completed during the process and completed forms issued to the Commissioning Team.
- (d) Project Co shall schedule all warranty repairs and deficiency corrections. When the work has been completed the Project Co Commissioning Coordinator shall lead the Commissioning Team to conduct Performance Testing to verify the operation of the associated systems.
- (e) The Project Co Commissioning Coordinator shall schedule training for the Metrolinx Occupants and GTAA Occupants. The training agenda shall be based on operational procedures for all mechanical and electrical equipment and systems.
- (f) The Project Co Commissioning Coordinator shall develop an Operational Quality Control Plan with the building operators.
- (g) The Project Co Commissioning Coordinator shall prepare a final commissioning report. The report will address issues outstanding from the first report. The report will identify the results and issues resulting from the post construction commissioning process.

## **6. COMMISSIONING SUBMITTALS**

- 6.1. Project Co shall prepare a design brief describing the mechanical and electrical systems design and performance requirements, including the requirements of the Output Specifications (the "**Commissioning Brief**") prior to beginning the construction process.
- 6.2. Project Co shall prepare and submit to the HMQ Representative the Commissioning Plan identified in 5.4(c) of this Schedule 14.
- 6.3. Project Co shall prepare and submit to the HMQ Representative test forms, verification forms and performance test forms for all equipment and systems.
- 6.4. Project Co shall prepare and submit to the HMQ Representative, the Performance Testing and the Commissioning Progress Management Forms for each building system and the commissioning summary form to be used for monthly reporting.
- 6.5. Project Co shall prepare and submit to the HMQ Representative a detailed Commissioning Schedule for each item of equipment and building system provided as part of the Works.

- 6.6. Project Co shall prepare and submit to the HMQ Representative detailed commissioning manuals for each item of equipment and building system provided as part of the Works (the "**Commissioning Manuals**").
- 6.7. All Commissioning Manuals shall be bound in hard cover, D-ring binders with transparent cover on front and spine, personalized to indicate;
- (i) name and logo as directed by the HMQ Representative;
  - (ii) name of the Project;
  - (iii) project number;
  - (iv) identification of each item of equipment and building system commissioned; and
  - (v) the date each item of equipment or building system was commissioned.
- 6.8. All Commissioning Manuals shall have machine printable index dividers to organize each manual by item of equipment or building system and by commissioning stage and shall include:
- (i) test reports;
  - (ii) equipment check sheets (start-up, verification and performance) for each item of equipment provided as part of the Works;
  - (iii) building systems check sheets (start-up, verification and performance) for each building system provided as part of the Works; and
  - (iv) interim and final acceptance check sheets for each item of equipment and building system provided as part of the Works.
- 6.9. Project Co shall prepare and submit the System Operation Manuals identified in section 5.7(d) of this Schedule 14;
- 6.10. Project Co shall prepare and submit the Re-Commissioning Manual as identified in section 5.7(e) of this Schedule 14; and
- 6.11. Project Co shall prepare and submit the training schedule, agenda and video disks as identified in section 5.8(c) of this Schedule 14.

## **7. COORDINATION WITH HMQ**

- 7.1. The Project Co Commissioning Coordinator shall co-ordinate with HMQ, throughout the commissioning process. This co-ordination shall include:

- (i) review of test, verification and performance test forms;
  - (ii) review of Commissioning Progress Management Forms and Performance Testing;
  - (iii) review of the Commissioning Plan;
  - (iv) review of the Commissioning Schedule;
  - (v) sample witnessing of tests and Performance Testing;
  - (vi) review of the training agenda and scheduling;
  - (vii) review of the O&M Manuals;
  - (viii) sample witnessing of Seasonal Performance Testing;
  - (ix) review of the commissioning reports;
  - (x) attend commissioning meetings;
  - (xi) coordination and attendance in meetings with the Metrolinx Signals and Communications Team to ensure a smooth transition between the work of Project Co and the Signals And Communications Contract; and
  - (xii) report to HMQ regarding the progress of commissioning.
- (b) For greater clarity, HMQ shall not bear any responsibility other than for the HMQ Commissioning with respect to the proper commissioning of the ARL Spur Line and ARL T1 Station.

## **8. COORDINATION WITH GTAA**

- 8.1. The Project Co Commissioning Coordinator shall co-ordinate with GTAA, throughout the commissioning process for any element of the Work that interfaces with existing GTAA systems. This co-ordination may include:
- (i) review of test, verification and performance test forms;
  - (ii) review of Commissioning Progress Management Forms and Performance Testing;
  - (iii) review of the Commissioning Plan;
  - (iv) review of the Commissioning Schedule;
  - (v) sample witnessing of tests and Performance Testing;

- (vi) review of the training agenda and scheduling;
- (vii) review of the O&M Manuals;
- (viii) sample witnessing of Seasonal Performance Testing;
- (ix) review of the commissioning reports;
- (x) attend commissioning meetings; and
- (xi) report to GTAA regarding the progress of commissioning.

## **9. BUILDING SYSTEMS TO BE COMMISSIONED**

9.1. The Project Co Commissioning will include the commissioning of all items of equipment and building systems provided as part of the Works including, but not limited to, the following:

- (a) Building Envelope
  - (i) Air/Vapour Barrier
  - (ii) Roofing
  - (iii) Thermal Scan
- (b) Fire Protection Systems (Sprinkler and Standpipe Systems)
- (c) Plumbing Systems
- (d) Hydronic Heating and Cooling Systems
- (e) Air Distribution Systems
- (f) Smoke Control and Evacuation Systems
- (g) Refrigeration Systems if applicable
- (h) Building Automation Systems
- (i) Chemical Treatment of Systems
- (j) Noise and Vibration
- (k) Electrical Systems
- (l) Communications Systems

- (m) Security & Safety Systems

## **10. EQUIPMENT COMMISSIONING**

Unless the Parties otherwise agree, each item of equipment shall be de-commissioned, commissioned and re-commissioned in accordance with the acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant equipment vendor.

### **11. THE FOLLOWING IS A LIST OF THE DEFINITION OF TERMS THAT APPEAR IN THE OUTLINE COMMISSIONING SPECIFICATION. TERMS USED IN THIS SCHEDULE 14 AND NOT DEFINED HEREIN HAVE THE MEANINGS ASCRIBED TO THEM IN SCHEDULE 1 OF THE PROJECT AGREEMENT.**

- 11.1. **“Balancing Contractor”**. An air and water contractor balancing contractor that provides the balancing requirements that will be specified by the Project Co mechanical consultant. They will become part of the Commissioning Team and will assist with the systems verification process.
- 11.2. **“Commissioning Brief”** has the meaning given thereto in Section 6.1.
- 11.3. **“Commissioning Manuals”** has the meaning given thereto in Section 6.6.
- 11.4. **“Commissioning Progress Management Forms”** means the forms prepared by the Project Co Commissioning Coordinator which will be used to identify that the functions within the commissioning process have been completed.
- 11.5. **“Commissioning Schedule”** means the schedule prepared and regularly updated by the Project Co Commissioning Coordinator which will combine all schedules provided by each subcontractor, and track the timeline of the Final Commissioning Program.
- 11.6. **“Design Intent”** means the document to be prepared by Project Co that shall identify the performance requirements for each mechanical and electrical system. The Project Co Commissioning Coordinator shall prepare the performance verification procedures and documentation to verify that the performance design intent has been achieved by the building systems.
- 11.7. **“Electrical Testing Contractor”** means the subcontractor to the Electrical Contractor who will conduct the testing requirements for the normal and emergency power systems.
- 11.8. **“Fire Alarm Testing Contractor”** means the subcontractor to the electrical contractor who will conduct the Life Safety testing requirements required by the Ontario Building Code.
- 11.9. **“O&M Manuals”** has the meaning given thereto in Section 5.7(a).

- 11.10. “**Operational Quality Control Plan**” means the process which the building operators are to respond to alarms, problems and building occupants, and how to document these issues so that they can be analysed during the Seasonal Performance Testing.
- 11.11. “**Performance Testing**” means the tests to be conducted by Project Co to verify that the building systems are providing the Design Intent performance.
- 11.12. “**Quality Control Plan**” means the quality control plan to be developed by Project Co in accordance with the requirements of TGS and CSA for the purpose of identifying how the equipment and installation will be protected to avoid damage and operation problems when the systems are running.
- 11.13. “**Seasonal Performance Testing**” means the Performance Testing required during the first year of operation while the building systems are under load and are experiencing the seasonal changes.
- 11.14. “**Start Up Tests**” means the tests to be completed by Project Co prior to and after start up of mechanical and electrical equipment.
- 11.15. “**Static Tests**” means the tests to be completed by Project Co during construction for piping, ductwork and electrical power systems.
- 11.16. “**System Operation Manual**” means the manual that describes how systems are to operate and be maintained.

TOR01: 4540731: v13

**SCHEDULE 15**

**OUTPUT SPECIFICATIONS**

**[REDACTED]**

TOR01: 4540736: v13

**SCHEDULE 16**

**LEGAL DESCRIPTION OF SITE AND TITLE ENCUMBRANCES**

**A. Legal Description of the Site:**

The Site is shown crosshatched on sheets 1 to 6 of the ARL Corridor Title Record and Right of Way Plan dated October 28, 2011, prepared by the MMM Group, a copy of which is attached hereto as Exhibit 1.

**B. “Title Encumbrances” means:**

1. The following documents:

(a) PIN 13262-0190 (LT)

- (i) GTAA Ground Lease: Instrument PR1237470 registered April 4, 2007 is a Notice of Lease between Her Majesty The Queen in Right of Canada as represented by the Minister of Transport, as Landlord, and Greater Toronto Airports Authority (“GTAA”), as Tenant, being notice of the ground lease (the “GTAA Ground Lease”) made as of December 2, 1996 and specifying a term of sixty (60) years from December 2, 1996 with one (1) option to renew for a term of twenty (20) years.
- (ii) Hydro Easement: Instrument VS134244 registered February 27, 1970 is a Transfer Easement in favour of The Hydro-Electric Commission of The Town of Mississauga for the purposes of constructing, repairing and maintaining lines of electric power and service wire and all appurtenances thereto.
- (iii) Airport Zoning Regulations: Instrument LT2057426 registered March 27, 2000 is a Notice by Her Majesty The Queen in Right of the Department of Transport Canada regarding the Pearson Airport Zoning Regulation.

(b) PIN 13260-0327 (LT)

- (i) GTAA Ground Lease: Instrument PR1237470 registered April 4, 2007 is a Notice of Lease between GTAA as Tenant and Her Majesty The Queen in Right of Canada as Landlord, being notice of the GTAA Ground Lease.
- (ii) Airport Zoning Regulations; Instrument LT2057426 registered March 27, 2000 is a Notice by Her Majesty The Queen in Right of the Department of Transport Canada regarding the Pearson Airport Zoning Regulation.



- (c) PIN 13260-0315 (LT)
  - (i) GTAA Ground Lease: Instrument PR1237470 registered April 4, 2007 is a Notice of Lease between GTAA as Tenant and Her Majesty The Queen in Right of Canada as Landlord, being notice of the GTAA Ground Lease.
  - (ii) Sewer Easement: Instrument VS43119 registered June 26, 1967 is a Grant of Easement in favour of The Corporation of the Township of Toronto for the purposes of constructing, installing, operating, maintaining, inspecting, altering, removing, replacing, reconstructing, enlarging and repairing sanitary sewers. Instrument PR2007706 registered May 25, 2011 is a Notice under section 71 of the Land Titles Act by The Regional Municipality of Peel, being notice of an interest pursuant to the Transfer of Easement registered as Instrument VS43119 on June 26, 1967 indicating that the Region of Peel has an interest in such easement.
  
- (d) PIN 13262-0014 (LT)
  - (i) GTAA Ground Lease: Instrument LT1682109 registered November 29, 1996 is a Notice of Lease between the Minister of Transport, as Owner, and GTAA as Ground Lessee, being notice of the GTAA Ground Lease.
  - (ii) Navigational System Easement: Instrument PR361078 registered December 9, 2001 is a Notice of Easement in favour of the Minister of Transport and GTAA, over Part 1, Plan 66R-19891, being part of Lot 19, Concession 3 Fronting the Humber, Toronto for a navigational system.
  - (iii) Encroachment Agreement: Instrument PR925686 registered September 14, 2005 is a Notice of an Encroachment Agreement between GTAA and The Corporation of The City of Mississauga with respect to the erection, operation and maintenance of an enclosed pedestrian bridge above and across a portion of Viscount Road.
  - (iv) Airport Zoning Regulations:
    - (1) Instrument TT74437 registered June 1, 1953 is Notice regarding Toronto-Malton Airport Zoning.
    - (2) Instrument TT91081 registered September 29, 1955 is a Notice amending the Toronto-Malton Airport Zoning.
    - (3) Instrument TT120053 registered June 15, 1959 is a Notice of Amendment of Toronto-Malton Airport Zoning Regulations.
    - (4) Instrument TT144298 registered March 13, 1962 is a Notice of Amendment of Toronto-Malton Airport Zoning Regulations.

- (5) Instrument VS248789 registered February 12, 1973 is a Notice of Amendment of Toronto-Malton Airport Zoning Regulations.
- (6) Instrument VS390394 registered May 3, 1976 is an Order in Council amending Toronto-Malton Airport Zoning Regulations.
- (7) Instrument LT2057426 registered March 27, 2000 is a Notice by Her Majesty The Queen in Right of the Department of Transport Canada regarding the Pearson Airport Zoning Regulation.
- (v) Additional Items: This parcel is also subject to the items listed under PIN 13526-0003 (LT) under Air Canada Subleases and Related Matters (except instrument No. 454876).
- (e) PIN 13262-0017 (LT)
  - (i) GTAA Ground Lease: Instrument PR1237470 registered April 4, 2007 is a Notice of Lease between GTAA as Tenant and Her Majesty The Queen in Right of Canada as Landlord, being notice of the GTAA Ground Lease
  - (ii) Additional Items: This parcel is also subject to the Airport Zoning Regulation registrations noted above as Instruments TT120053, TT144298, VS248789, VS390394 and LT2057426.
- (f) PIN 13262-0019 (LT)
  - (i) GTAA Ground Lease: Instrument PR613211 registered March 30, 2004 is a Notice of Lease between GTAA as Tenant and the Minister of Transport as Landlord, being notice of the GTAA Ground Lease.
  - (ii) Hydro Easement: Instrument VS134244 registered February 27, 1970 is a Transfer Easement in favour of The Hydro-Electric Commission of The Town of Mississauga for the purposes of constructing, repairing and maintaining lines of electric power and service wire and all appurtenances thereto.
  - (iii) Hydro Easement: Instrument RO1058691 registered February 17, 1994 is a Transfer Easement in favour of The Corporation of The City of Mississauga, The Regional Municipality of Peel and Mississauga Hydro-Electric Commission for utilities, storm and sanitary sewers, watermains and utility lines.
  - (iv) Subdivision Agreement: Instrument VS123210 registered October 7, 1969 is a Subdivision Agreement between Saracini Investments Limited, The Corporation of The Town of Mississauga and The Public Utilities Commission of the Town of Mississauga.

- (v) Additional Items: This parcel is also subject to the Airport Zoning Regulation registrations noted above as Instruments TT120053, TT144298, VS248789, VS390394 and LT2057426.
  
- (g) PIN 13262-0020 (LT)
  - (i) GTAA Ground Lease: Instrument PR1237470 registered April 4, 2007 is a Notice of Lease between GTAA as Tenant and Her Majesty The Queen in Right of Canada as Landlord, being notice of the GTAA Ground Lease.
  - (ii) Hydro Easement: Instrument VS134244 registered February 27, 1970 is a Transfer Easement in favour of The Hydro-Electric Commission of The Town of Mississauga for the purposes of constructing, repairing and maintaining lines of electric power and service wire and all appurtenances thereto.
  - (iii) Airport Zoning Regulations: Instrument LT2057426 registered March 27, 2000 is a Notice by Her Majesty The Queen in Right of the Department of Transport Canada regarding the Pearson Airport Zoning Regulation.
  
- (h) PIN 13262-0038 (LT)
  - (i) GTAA Ground Lease: Instrument PR1237470 registered April 4, 2007 is a Notice of Lease between GTAA as Tenant and Her Majesty The Queen in Right of Canada as Landlord, being notice of the GTAA Ground Lease.
  - (ii) Encroachment Agreement: Instrument PR642131 registered May 21, 2004 is a Notice of Encroachment Agreement between The Regional Municipality of Peel and GTAA for the operation on an elevated guideway of a passenger transportation system known as the airport people mover serving various airport locations and crossing Airport Road.
  - (iii) Airport Zoning Regulations: Instrument LT2057426 registered March 27, 2000 is a Notice by Her Majesty The Queen in Right of the Department of Transport Canada regarding the Pearson Airport Zoning Regulation.
  
- (i) PIN 13526-0003 (LT)
  - (i) GTAA Ground Lease: Instrument RO1129884 registered November 29, 1996 is a Notice of Lease between GTAA as Tenant and Her Majesty The Queen in Right of Canada as Landlord, being notice of the GTAA Ground Lease.
  - (ii) Navigation Easement: Instrument PR361078 registered December 9, 2001 is a Notice of Easement from Greater Toronto Airports Authority Associate Inc. (“GTAA Associate”) in favour of the Minister of Transport and GTAA, over Part 1, Plan 66R-19891, being part of Lot 19, Concession 3 Fronting the Humber, Toronto, for purposes of a navigation system.

- (iii) Vista Cargo Centres Lease: Instrument RO762426 registered July 31, 1986 is a Lease between the Minister of Transport, as Landlord, and Vista Cargo Centres Inc, as Tenant. Instrument RO1129463 registered November 27, 1996 is a Charge from Vista Cargo Centres Inc., as Chargor, in favour of The Mutual Trust Company, as Chargee in the amount of \$36,387,278. Instrument PR767881 registered December 3, 2004 is a Transfer of Charge from Clarica Trust Company (formerly The Mutual Trust Company) to Computershare Trust Company of Canada, re Charge No. RO1129463.
- (iv) Steels Aviation Services Lease: Instrument RO944078 registered July 13, 1990 is a Notice of Lease between the Minister of Transport, as Lessor and Steels Aviation Services Limited, as Lessee, for the property municipally known as 2950 Convair Drive, Mississauga. Instrument RO1153646 registered September 23, 1997 is an Assignment of Lease from the Minister of Transport to GTAA being an assignment of the landlord interests in the Steels Aviation Services Lease (RO944078).
- (v) Pearson International Fuel Facilities Leases: Instrument RO1045177 registered August 16, 1993 is a Notice of Lease between the Minister of Transport as Lessor and Pearson International Fuel Facilities Corporation, as Lessee. Term expires June 14, 2032. Instrument RO1049467 registered October 7, 1993 is a Notice of Lease between the Minister of Transport as Lessor and Pearson International Fuel Facilities Corporation, as Lessee. Instrument RO1153660 registered September 23, 1997 is an Assignment of Lease by the Minister of Transport to GTAA being an assignment of the landlord interests in the leases to Pearson International Fuel Facilities Corporation. (RO1045177 and RO1049467).
- (vi) Air Canada Subleases and Related Documents:
  - (1) Instrument PR454826 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sublessor expiring on January 1, 2010 or until Sublessee ceases to do business in Terminal 2.
  - (2) Instrument PR454860 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending December 31, 2027.
  - (3) Instrument PR454863 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending December 31, 2027 but acknowledging that the sublessee is still in possession.

- (4) Instrument PR454865 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending July 31, 2009.
- (5) Instrument PR454876 registered June 25, 2003 is a Notice of Sublease between Air Canada as Sub-Lessee and GTAA as Sub-Lessor for a term ending August 31, 2007.
- (6) Instrument PR454883 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending March 31, 2003 but acknowledging that the sublessee is still in possession.
- (7) Instrument PR454886 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending March 31, 2003 but acknowledging that the sublessee is still in possession.
- (8) Instrument PR454914 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending March 31, 2003 but acknowledging that the sublessee is still in possession.
- (9) Instrument PR454921 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending February 28, 2010.
- (10) Instrument PR454927 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending January 31, 2010.
- (11) Instrument PR454930 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending July 31, 2005.
- (12) Instrument PR454938 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending December 31, 2027.
- (13) Instrument PR454939 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending August 28, 2007.
- (14) Instrument PR454944 registered June 25, 2003 is a Notice of Sublease between Air Canada, as Sub-Lessee and GTAA, as Sub-Lessor for a term ending November 30, 2005.

- (15) Instrument PR728714 registered September 30, 2004 is a Notice of Sublease between Air Canada, as Sub-SubLessor and AC Cargo General Partner Inc. as Sub-Sublessee for a term ending September 29, 2009.
- (16) Instrument PR728715 registered September 30, 2004 is a Notice of Sublease between Air Canada as Sub-SubLessor and ACTS General Partner Inc. as Sub-Sublessee for a term ending September 29, 2009.
- (17) Instrument PR728716 registered September 30, 2004 is a Notice of Sublease between Air Canada as Sub-SubLessor and ACTS General Partner Inc. as Sub-Sublessee for a term ending September 29, 2009.
- (18) Instrument PR728717 registered September 30, 2004 is a Notice of Sublease between Air Canada as Sub-SubLessor and Jazz Air Inc. as Sub-Sublessee for a term ending April 30, 2004. By Instrument PR728718 registered September 30, 2004 notice was given of the assignment of this sublease from Jazz Air Inc. to Jazz Air General Partner Inc.
- (19) Instrument PR728722 registered September 30, 2004 is a Notice of Charge of Lease between Air Canada, as Chargor and Stonecrest Capital Inc., as Chargee in the amount of \$550,000,000 charging the various sublease interests of Air Canada.
- (20) Instrument PR728723 registered September 30, 2004 is a Notice of Charge of Lease between AC Cargo General Partner Inc., as Chargor and Stonecrest Capital Inc., as Chargee in the amount of \$550,000,000 charging the various sublease interests of AC Cargo General Partner Inc.
- (21) Instrument PR728724 registered September 30, 2004 is a Notice of Charge of Lease between ACTS General Partner Inc., as Chargor and Stonecrest Capital Inc., as Chargee in the amount of \$550,000,000 charging the various sublease interests of ACTS General Partner Inc.
- (22) Instrument PR1870411 registered August 3, 2010 is a Notice of Charge of Lease between Air Canada as Chargor and BNY Trust Company of Canada, as Chargee in the amount of \$1,800,000,000, containing a Debenture and relating to Notice of Sublease No. PR454944.
- (23) Instrument PR1870412 registered August 3, 2010 is a Notice of Charge of Lease between Air Canada as Chargor and BNY Trust

- Company of Canada, as Chargee in the amount of \$1,800,000,000 containing a Debenture and relating to Notice of Sublease No. No. PR454921.
- (24) Instrument PR1870413 registered August 3, 2010 is a Notice of Charge of Lease between Air Canada as Chargor and BNY Trust Company of Canada, as Chargee in the amount of \$1,300,000,000 containing a Debenture and relating to Notice of Sublease No. PR454944.
- (25) Instrument PR1870414 registered August 3, 2010 is a Notice of Charge of Lease between Air Canada as Chargor and BNY Trust Company of Canada, as Chargee in the amount of \$1,300,000,000 containing a Debenture and relating to Notice of Sublease No. PR454921.
- (26) Instrument PR1870495 registered August 4, 2010 is a Postponement of Interest by Stonecrest Capital Inc. postponing Charge No. PR728722 in favour of the Charges of Leases to BNY Trust Company of Canada, notices of which were registered as Instrument Nos. PR1870411, PR1870412, PR1870413 and PR1870414.
- (j) PIN 13526-0011 (LT)
- (i) GTAA Ground Lease: Instrument RO1129884 registered November 29, 1996 is a Notice of Lease between the Minister of Transport, as Landlord, and GTAA, as Tenant, being notice of the GTAA Ground Lease.
- (ii) Apron and Gas Bar Easement: Instrument RO1141320 registered May 5, 1997 is a Transfer of Easement Agreement between Terminal 3 Limited Partnership and Pearson International Fuel Facilities Corporation with respect to certain easements and rights for construction, maintenance, repair and operation of the Apron System and Gas Bar. Instrument LT1893179 registered December 3, 1998 is an Assignment and Assumption Agreement between GTAA Associate as assignor and GTAA as assignee with respect to the above Pearson International Fuel Facilities Corporation Easement Agreement (RO1141320).
- (iii) Encroachment Agreement: Instrument PR642131 registered May 21, 2004 is a Notice of Encroachment Agreement between The Regional Municipality of Peel and GTAA for the operation on an elevated guideway of a passenger transportation system known as the airport people mover serving various airport locations and crossing Airport Road.
- (iv) Hotel Lease: Instrument RO954616 registered November 5, 1990 is a Lease from the Minister of Transport to Airport Development Corporation

with respect to the ITT Sheraton Hotel. Lease Amending Agreements have been registered as Instrument Nos. RO1012687, RO1084430 and RO1101708. Instrument RO1084429 registered February 1, 1995 is an Assignment of Lease from Airport Development Corporation to ITT Sheraton Canada Ltd. with respect to the ITT Sheraton Hotel. Instrument RO1140713 registered April 30, 1997 is an Assignment of Lease from the Minister of Transport to GTAA with respect to the ITT Sheraton Hotel. Instrument PR903200 registered August 9, 2005 is an Application for Leasehold Parcel in respect of the ITT Sheraton Hotel.

- (v) Reserved Lands Sublease: Instrument RO 954609 registered November 5, 1990 is a sublease entered into in connection with the ITT Sheraton Hotel Lease and known as the Reserved Lands Sublease. Notice of amendments been registered as Instrument Nos. RO956379 and LT1893183. Instrument LT1893184 registered December 3, 1998 is a Notice of Assignment of Sublease between GTAA Authority as assignor and GTAA as assignee with respect to T3C Reserved Lands Sublease. Instrument PR1382675 registered November 30, 2007 is a Notice of Assignment between Starwood Canada Corp. as assignor and Clocktower Hotel Limited Partnership with respect to the Reserved Lands Sublease.
- (vi) Reciprocal Operating Agreement: Instrument RO985329 registered October 4, 1991 is an Agreement between Terminal 3 Limited Partnership and Airport Development Corporation, being the Terminal 3 Complex-First Hotel Reciprocal Operating Agreement. Instrument No. RO1084427 is an amendment registered February 1, 1995. Instrument No. RO1101706 is an amendment registered October 30, 1995 that limits the application of this Reciprocal Operating Agreement. Instrument LT1893187 registered December 3, 1998 is a Notice of Assignment between GTAA Associate as assignor and GTAA as assignee with respect to the Terminal 3 Complex-First Hotel Reciprocal Operating Agreement. Instrument PR1382676 registered November 30, 2007 is a Notice of Assignment between Starwood Canada Corp. as assignor and Clocktower Hotel Limited Partnership as assignee with respect to the Terminal 3 Complex-First Hotel Reciprocal Operating Agreement.
- (vii) First Hotel-Other Area 3 Development Operating Agreement: Instrument RO1101715 registered October 30, 1995 is an Agreement between Terminal 3 Development Corporation and ITT Sheraton Canada Ltd. being the First Hotel-Other Area 3 Development Operating Agreement. Instrument LT1893186 registered December 3, 1998 is a Notice of Agreement between GTAA Associate and ITT Sheraton Canada Ltd. being an amendment to the Terminal 3 Complex-First Hotel Reciprocal Operating Agreement. Instrument LT1893188 registered December 3, 1998 is a Notice of Amendment to the First Hotel-Other Area 3 Development Operating Agreement (RO1101715) between GTAA and



ITT Sheraton Canada Ltd. Instrument LT1893189 registered December 3, 1998 is a Notice of Assignment between GTAA as assignor and GTAA as assignee with respect to the First Hotel-Other Area 3 Development Operating Agreement (RO1101715). Instrument PR1382677 registered November 30, 2007 is a Notice of Assignment between Starwood Canada Corp. as assignor and Clocktower Hotel Limited Partnership as assignee with respect to the First Hotel-Other Area 3 Development Operating Agreement.

- (viii) Pearson International Fuel Facilities Lease: Instrument RO1045177 registered August 16, 1993 is a Notice of Lease between the Minister of Transport as Lessor and Pearson International Fuel Facilities Corporation, as Lessee. Instrument RO1153660 registered September 23, 1997 is an Assignment of Lease by the Minister of Transport to GTAA in respect of various leases to Pearson International Fuel Facilities Corporation.
- (ix) Pearson International Fuel Facilities Lease: Instrument RO1141321 registered May 5, 1997 is a Notice of Lease between the Minister of Transport, as Landlord, and Pearson International Fuel Facilities Corporation, as Tenant. Instrument RO1153660 registered September 23, 1997 is an Assignment of Lease by the Minister of Transport to GTAA in respect of various leases to Pearson International Fuel Facilities Corporation.
- (x) Hotel Subleases to Wireless Operators: Instrument PR245499 registered May 17, 2002 is a Notice of Lease between Starwood Canada Corp. as landlord and Rogers Wireless Inc. as tenant for premises at Sheraton Gateway Hotel. Instrument PR944329 registered October 14, 2005 is a Notice of Sublease between Starwood Canada Corp. as landlord and TM Mobile Inc. as tenant.

(k) Other Terminal 3 Matters

The following items deal with the assignment to and assumption by GTAA of the various rights and obligations of Terminal 3 Development Corporation and Terminal 3 Limited Partnership.

- (i) Instrument RO1141324 registered May 5, 1997 is an Assignment of Lease from Terminal 3 Development Corporation, as assignor, to GTAA, as assignee with respect to the Landlord's Interest in T3C Reserved Lands Sublease.
- (ii) Instrument RO1141325 registered May 5, 1997 is an Assignment of Lease from Terminal 3 Limited Partnership, as assignor, to GTAA Associate, as assignee with respect to the Sub-Tenant's Interest in T3C Reserved Lands Sublease.

- (iii) Instrument RO1141329 registered May 5, 1997 is an Assignment of Agreement between Terminal 3 Limited Partnership, as assignor, to GTAA Associate, as assignee with respect to the Reciprocal Operating Agreement.
  - (iv) Instrument RO1141331 registered May 5, 1997 is an Assignment of Agreements between Terminal 3 Development Corporation, as assignor, to GTAA, as assignee with respect to the Other Area 3 Ground Lease and Additional Agreements.
  - (v) Instrument RO1141333 registered May 5, 1997 is an Assignment of Subleases between Terminal 3 Limited Partnership, as assignor, to GTAA Associate, as assignee with respect to various subleases, all of which appear to be in Terminal 3.
  - (vi) Instrument RO1141339 registered May 5, 1997 is a Landlord Acknowledgment and Agreement between GTAA, as landlord under the T3C Reserved Lands Sublease and GTAA, in its capacity as Loan Mortgagee with respect to the Loan Mortgage of the Terminal 3 Complex Lands.
  - (vii) Instrument LT1893177 registered December 3, 1998 is a Notice of Lessor's Interest in a Lease between GTAA Associate as assignor and GTAA as assignee with respect to the Terminal 3 Airline Subleases.
  - (viii) Instrument LT1893182 registered December 3, 1998 is a Notice of Partial Surrender of Sublease between GTAA as landlord and GTAA Associate as Tenant with respect to T3C Reserved Lands Sublease.
  - (ix) Instrument LT1893185 registered December 3, 1998 is a Notice of Assignment between GTAA Associate as assignor and GTAA as assignee with respect to T3C Subleased Premises and T3C Appurtenant Rights Acknowledgement and Agreement.
- (l) **Additional Items:** This parcel is also subject to the items listed under PIN 13526-0003 (LT) under Air Canada Subleases and Related Matters (except instrument No. 454876) and the Vista Cargo Lease.
2. Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by HMQ.
3. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of which notice in

writing shall not at the time have been given to HMQ pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, HMQ has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.

4. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
5. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
7. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.

**EXHIBIT 1**

**[REDACTED]**

TOR01: 4540748: v12

## **SCHEDULE 17**

### **WORKS REPORT REQUIREMENTS**

1. The Works Report shall include the following:
  - (a) an executive summary;
  - (b) one month look ahead;
  - (c) design status;
  - (d) Works Schedule summary, including:
    - (i) permits;
    - (ii) construction progress;
    - (iii) progress photos;
    - (iv) construction milestones; and
    - (v) submissions schedule;
  - (e) contractual outstanding decisions;
  - (f) EA and CEEA reporting requirements;
  - (g) quality assurance and quality control;
  - (h) organization / staffing changes and additions for Project Co and Construction Contractor;
  - (i) health and safety, including:
    - (i) lost time injuries; and
    - (ii) accidents with no lost time;
  - (j) Subcontract status, including:
    - (i) consultants;
    - (ii) Subcontracts awarded;
    - (iii) tenders;
    - (iv) shop drawing submittals status; and

- (v) labour report (average workforce);
- (k) financial status, including:
  - (i) progress and Variations;
  - (ii) insurance summary;
  - (iii) Construction Contractor default status;
  - (iv) cash flow projection (capital cost components); and
  - (v) Lenders' Consultant schedule sign-off;
- (l) 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;
- (m) cash allowances, including:
  - (i) cash allowance financials (in the Project Agreement); and
  - (ii) cash allowance status and spend projection; and
- (n) commissioning, occupancy and completion.

TOR01: 4540932: v13

**SCHEDULE 18**

**COMMUNICATIONS PROTOCOL**

**1. GENERAL**

**1.1 Communications Principles**

The Project represents an important infrastructure commitment by the Province of Ontario. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the security aspects of the ARL Spur Line and ARL T1 Station are protected and the public is informed and engaged where necessary and to meet HMQ communications requirements. This plan will support effective communications between Project Co and HMQ, and with HMQ stakeholders and the HMQ community.

**2. HMQ RESPONSIBILITIES**

**2.1 Lead Communications Role**

HMQ will assume the lead communications role. HMQ will take primary responsibility for all communications matters and will be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

**2.2 HMQ Communications Responsibilities**

HMQ will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special events, employee communications and government relations regarding issues related to the Project.

- (b) Crisis Communications: To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days following Financial Close outlining the roles and responsibilities of both HMQ and Project Co during a crisis situation.
- (c) ARL Related Communication: To provide all communications related to the provision of the ARL Operations.
- (d) Performance Review: To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

### **3. PROJECT CO RESPONSIBILITIES**

#### **3.1 Support Communications Role**

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by HMQ for website content;
- (d) updating, in collaboration with HMQ, internal/ external stakeholders, as required, including involvement and participation in community events;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to HMQ's lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to HMQ's lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to HMQ on communications matters on an agreed upon basis;
- (i) participating in HMQ communications meetings, as required; and
- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with HMQ and proactively manage and perform its communications responsibilities.



### **3.2 Project Co Communications Responsibilities**

Project Co will:

- (a) within 30 days following Financial Close and in collaboration with HMQ, develop, maintain and implement a construction liaison and communications plan that includes:
  - (i) a description of Project Co's approach to all communications aspects of the Project;
  - (ii) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Project Co Parties who will provide any aspect of the communications program; and
  - (iii) the identification of proposed communication tools to be used to keep the community and other stakeholders informed with respect to the progress of the Project;
- (b) update the construction liaison and communications plan on an annual basis or as reasonably requested by HMQ;
- (c) coordinate with HMQ in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with HMQ to discuss communication issues and developments;
- (e) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through HMQ, provide regular updates to the immediately affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);
- (g) provide regular updates to HMQ related to the management of local traffic during the Works;
- (h) develop, in collaboration with HMQ, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (i) follow any guidelines provided by HMQ related to signage or advertising at the Site.

#### **4. PUBLIC DISCLOSURE AND MEDIA RELEASES**

##### **4.1 Public Disclosure and Media Releases**

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the ARL Operations, or any matters related thereto, without the prior written consent of HMQ, in its sole discretion, or, in the case of any media release, public announcement or public disclosure required by Applicable Law, without the prior written consent of HMQ.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the ARL Operations, or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with HMQ's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by HMQ from time to time.

#### **5. CONSTRUCTION SIGNAGE**

##### **5.1 Construction Signage Guidelines**

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lenders, as applicable, shall:

- (a) include the IO logo and the Metrolinx logo on the sign;
- (b) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the Site; or (ii) 16 feet by 8 feet;
- (c) notwithstanding Section 5.1(b), adhere to local by-laws including by-laws regarding placement and size;
- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to HMQ for approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

**SCHEDULE 19**

**HERITAGE GUIDELINES AND PROTOCOLS**

Attached are the guidelines, protocols and best practices that Project Co and all Project Co Parties are required to follow pursuant to Section 18.3(b)(iv) of the Project Agreement upon the discovery on the Site of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites.

**BEST PRACTICE GUIDELINES FOR THE  
TREATMENT OF HUMAN SKELETAL REMAINS DISCOVERED OUTSIDE  
A LICENSED CEMETERY**

The attached document is a “best practices” guideline describing the procedures for the treatment of human skeletal remains discovered outside a licensed cemetery. It reflects an agreement among members of the various ministries and agencies involved in the resolution of such burials (i.e., First Nations Burial Committee of Toronto; Toronto Police Service; Ministry of Citizenship, Culture and Recreation; Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations; Ministry of Transportation; and The Office of the Chief Coroner) and reflects what is seen as the best practice.

The document is intended to serve as a guide to approval authorities as a discovery goes through the many different steps involved in a reburial to ensure that human remains are treated with respect and dignity and processed in a timely and efficient manner.

It is intended that this guide be reviewed periodically to reflect experiences with the topic. The signatories to this guideline have agreed to ensure that staffs within their jurisdictions have access to this guideline.

Should clarification be required, please refer to the *Cemeteries Act (Revised)* R.S.O. 1990 or contact one of the signatories.

Signatories:

First Nations Burial Committee of Toronto  
Toronto Police Service  
Ministry of Citizenship, Culture and Recreation  
Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations  
Ministry of Transportation  
Office of the Chief Coroner

## **The Discovery of Human Remains - Best Practices**

### **Introduction**

The following is designed to assist all those involved in responding to and addressing discoveries of human skeletal remains outside of a licensed cemetery. The advice is presented as a series of best practices among the many overlapping interests and jurisdictions of several ministries, agencies, police services and other government bodies that are triggered when human skeletal remains are uncovered. This approach has been developed with the support and approval of the First Nations Burial Committee of Toronto. The practices outlined here are equally applicable to discoveries of human remains across Ontario.

These best practices support the existing regulatory and statutory mechanisms in Ontario. Responsibility for a burial passes through a number of jurisdictions (i.e., Police, Coroner, Cemeteries Regulation Section) and the intent of this document is to ensure this flow is effective and seamless. This information should be read along with the attached flow chart outlining the mandatory process to be followed under existing statutes. Although the flow chart describes the process as being linear, in many instances events can and do happen simultaneously.

### **A Note on Public Notification:**

Getting through the entire discovery and disposition process when human remains are found will see the authority of the issue shift among several agencies. As such, until all investigations have been carried out and the disposition resolved, formal press releases or contacting the media should only occur if all affected authorities have concurred (i.e. police, coroner and Cemeteries Registrar). In addition, after all investigations have been completed, the concerns of the landowner and group acting as representative for the deceased (e.g. First Nation) should be considered before media contact. Premature media notification, particularly prior to having accurate identification of the deceased, will lead to misinformation, misplaced concerns being raised, and potentially a hardening of attitudes. This can make a final disposition agreement more difficult to reach.

Any media interest should be directed to the agency that has authority over the burial site at the time of the media contact (i.e. police, Coroner's Office or Cemeteries Registrar). Media photography of the remains should be avoided: a publicly displayed photograph of skeletal remains is both disrespectful to the deceased and offensive to representatives for the deceased.

### **A Note on Archaeology:**

It is important to note that the discovery of human remains will occur in two basic contexts: either through accidental discovery by an individual in unexpected circumstances, or through discovery as part of an archaeological examination/excavation of a locale by a trained archaeologist, licensed by the Ministry of Citizenship, Culture & Recreation (MCzCR) under the *Ontario Heritage Act*. In the latter case, the archaeologist will possess the skills, knowledge and expertise to assist both the police and coroner in determining the age of the interment, as well as to assist the landowner in generating the information the Cemeteries Registrar will require to determine the nature, extent and cultural affiliation of the persons buried. His or her presence at

the front end of the discovery process will greatly aid all authorities in making quick and accurate determinations, and as such should be relied on as much as possible in such circumstances.

**Under the *Coroner's Act***

1. A person finding skeletal material may first contact staff in an agency other than the police or coroner (e.g. MCzCR or Ministry of Consumer & Commercial Relations [MCCR] staff). When that occurs, the person is to be immediately instructed to report the find to the local police or coroner. An appropriate contact list (e.g. Regional Coroner's offices) should be maintained by all agencies that may be first contacted about such a discovery.

2. When the police are first contacted they will attend the scene, protect the site and contact the local coroner. The coroner, or the police on behalf of the coroner, will conduct an investigation to determine if: a) the skeletal material is human and b) if the site represents a crime scene. The investigators will need to obtain all the information required to make a determination. However, efforts should be made at this stage to minimize site disturbance. All bone and associated grave goods still embedded in the ground should not be disturbed unless removal is essential for the coroner to make a determination. Poking, pulling, and digging up the bone in an uncontrolled manner can quickly destroy critical data essential to making accurate identifications.

3. Whenever possible, the police and coroner should seek the assistance of an archaeologist in conducting the investigation. This is especially critical since burials are archaeological deposits in their own right, and are often found as part of more extensive archaeological deposits. As such, confirming an association of the burial with a surrounding archaeological site will help determine whether or not the remains are part of a crime scene. Also, the archaeologist can help ensure that the larger heritage resource is not destroyed or damaged during investigation of the skeletal material. MCzCR staff can sometimes be called on to visit the scene with the police.

4. Archaeologists will consider issues such as the condition and discoloration of the bone, presence of artefacts around the discovery site, and knowledge of known archaeological sites in the area to determine chronological (and cultural) associations. If intact deposits are examined, features such as the presence/absence of a coffin, depth of remains, position of body, presence of grave goods, etc., will also assist the determination.

5. When skeletal material is found and it is not readily obvious that this material is either a burial or crime scene, coroners will often employ the services of a physical anthropologist or osteologist to examine the bone in detail. While the coroner requires only a basic determination of age (i.e. recent vs. historic/ancient) and nature of the interment, the physical anthropologist's study can also determine cultural affiliation (based on the presence/absence of specific skeletal traits), age of the individual at death, sex, and even funerary practices. This information will be essential for both the Cemeteries Registrar's investigation, as well as for the deceased's representative in determining the appropriate re-interment requirements. As such, latitude in allowing the physical anthropologist to complete a full, basic descriptive analysis of the skeletal material as a part of the coroner's investigation will greatly aid in addressing remaining issues associated with this process.

6. When the Coroner is satisfied the discovery site is not a crime scene, it is essential that he/she notifies the Registrar of Cemeteries of the discovery, and passes along any relevant information (e.g. contacts, results of any analyses, etc.). It is also essential that the landowner understand that he/she will need to preserve and protect the site from the point when the police are no longer involved, and until a disposition is made under the *Cemeteries Act (Revised)*.

**Under the *Cemeteries Act (Revised)***

1. Under the *Cemeteries Act (Revised)* the Registrar will be required to determine and formally declare what the locale is: either an irregular burial site (unintentional interment), or an unapproved cemetery or unapproved Aboriginal Peoples cemetery. When the information is not already in hand (i.e. based on archaeological findings or the results of the coroner's investigation) the landowner normally will be required to undertake an investigation. Such an investigation will generate the information necessary for the Registrar to make an accurate declaration.

2. In most cases, such investigations will be undertaken by a licensed and qualified archaeologist hired by the landowner. MCzCR ensures that the Cemeteries Registrar has a current list of such licensees which can be made available to the landowner.

3. The intent of the investigation is to provide the Cemeteries Registrar with, the data necessary to make a declaration. As such, burial investigations will minimize normal archaeological fieldwork and reporting requirements. It will be determined following the Registrar's declaration and disposition agreement reached between landowner and deceased's representative whether disinterment is necessary.

4. The investigation for the Registrar must determine whether or not the interment(s) were intentional, and the basis on which this is made, the cultural affiliation of the deceased, and the defined limits of the area containing burials, the style and manner in which the remains are interred, and a description of the artefacts determined to form part of the burial site. It may also be necessary to determine the exact number of discrete burials present in the area. Excavation methods should maximize recovery of this data, while minimizing disturbances to the remains. Recording should also be limited to that required by the Registrar (e.g. emphasis on mapping location of burials in relation to property lines, existing structures, or other reference points). MCzCR will advise licensed archaeologists of the appropriate archaeological methods.

5. During the investigation, the remains must be treated with respect and care. All artefacts found in the burial are to be considered grave goods, and should be treated as part of the burial, and kept with the skeletal remains. Burials must not be unnecessarily exposed to the elements or to casual viewing, and must be covered over as soon as possible following identification. The landowner continues to be responsible for preserving and protecting the site during this investigation, and until a disposition is made under the *Cemeteries Act (Revised)*.

6. At the conclusion of the investigation a report must be submitted to the Registrar. This report will need to include the information required in Point 4. For sites that date to the last 200 years, historical research (e.g. land title search, newspapers, local informant interviews, etc.) may be required to answer some of the information points outlined in Point 4. This report will also

serve to address the archaeologist's reporting requirements for the license issued by MCzCR under the *Ontario Heritage Act*.

7. Once the Registrar can make a declaration, and the locale is determined to be an unapproved cemetery, he/she will locate a representative for the deceased. If the locale is an unapproved Aboriginal Peoples cemetery, the Registrar will contact the nearest First Nation Government. Another community of Aboriginal People whose members have a close cultural affinity to the interred person may also act as representative. As well, if agreed-to and established before-hand, a designated "Burials Committee" can serve as the first point of Aboriginal contact for the Registrar. If the burial is non-aboriginal, the Registrar will attempt to find a representative through media notification. Where no descendant is found, a representative of the same religious denomination as the person buried can act for the deceased.

8. The representative and landowner will agree to a disposition agreement outlining what is to be done with the burials. Where there is no agreement, binding arbitration is provided under the *Cemeteries Act (Revised)*. Typically there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and reinter them in an existing cemetery. The option selected with respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery will be negotiated between the landowner and representative for the deceased.

9. If the discovery is declared to be an irregular burial site, there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and re-inter them into an existing cemetery. The landowner will decide which option and is responsible for all costs.

10. In respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery, if a disinterment/reburial option is selected, the burials will need to be fully uncovered, removed and reinterred with a minimum of damage and time. Costs associated with a disposition agreement will be negotiated by the landowner and representative. While the time it takes to complete this work will be subject to the wishes of the landowner and representative, factors such as the number and nature of interments, level of observations required by the representative for re-interment purposes, etc., will affect the length of time needed to complete the removal and reinterment. Consequently, in order to minimize time while maximizing care and documentation, this work is best done by a licensed archaeologist under the direction of the disposition agreement.

11. During removal, detailed observations will need to be made of the archaeological context of the burial to ensure that all associated remains and grave goods are fully recovered. Age at death and sex of the individual should also be noted. This information will assist in determining the appropriate methods of re-interment, as well as to assist in determining what specific ceremonies need to accompany the reburial. Basic mapping can be used to aid in making these observations. No scientific analysis of the skeletal remains or grave goods can occur during this process without the consent of the representative of the deceased.



12. Should the disposition agreement impact on adjacent archaeological remains, or should concerns be raised for these deposits during negotiations, MCzCR will advise and work closely with the Cemeteries Registrar and others concerned to determine what is the most appropriate course of action. MCzCR will also assist in mediating any issues that might arise between the licensed archaeologist and other parties.

July 15, 1998

**CULTURAL HERITAGE PROTOCOL  
AGREEMENT BETWEEN  
THE MINISTRY OF GOVERNMENT SERVICES &  
THE MINISTRY OF CULTURE & COMMUNICATIONS**

**Introduction**

The Cultural Heritage Protocol is an agreement between the Ministry of Government Services (MGS) and the Ministry of Culture and Communications (MCC) concerning the development of a process for identifying and protecting cultural heritage resources affected by those MGS real property undertakings addressed in the MGS Parent Class Environmental Assessment (EA).

Effective July 1, 1991, the Protocol applies to Ontario Regulation 1/90 (MGS 1021, and is intended to continue under and in parallel with the functioning of the MGS Parent Class EA.

**Cultural Heritage Resources**

The following are cultural heritage resources based in real property:

- archaeological sites
- buildings and structural remains of historical, architectural and contextual value
- districts or landscapes of historic and scenic value in rural, village and urban contexts
- places which hold significance because of sacred value or long traditional use

**MGS Responsibilities**

As a purchaser, property owner or vendor, MGS is responsible for protecting the provincial interest in preserving its cultural heritage resources. As a tenant, MGS must not adversely affect cultural heritage resources on leased property.

**Implementation Plan**

MGS will implement the Protocol in two phases commencing before the implementation date of MGS Parent Class EA.

- Phase 1 is a short-term assignment to be performed by consultants in 3 stages.
- Phase 2 is an ongoing responsibility requiring permanent resources.

**Phase 1:**

This phase will be implemented in 3 stages as follows:

- A. MGS will retain a consultant to carry out the following steps:

1. Develop operational definitions of the cultural heritage resources listed above.
  2. Develop simple and effective criteria for determining whether or not a property has potential heritage significance.
  3. Prepare a list of available MGS, MCC and other government data sources for the recognition of cultural heritage resources.
  4. Identify and review existing guidelines; adopt/adapt relevant materials for MGS purposes, resulting in:
    - (a) A Guideline for Appropriate Documentation indicating where, when, who, and to what extent documentation should be collected for buildings, groups of structures, structural remains, districts and landscapes.
    - (b) An Evaluation System which can assess the significance of the resource being documented.
    - (c) A Guideline for Maintenance, Repair and Alteration identifying appropriate means of carrying out changes, renovation, rehabilitation, restoration, or additions to structures which have heritage significance.
  5. Assemble a list of government and non-government consultative sources, based on the stakeholders listed below, for the four categories of cultural heritage resources.
  6. Develop heritage inventory forms which can be used by field staff and serve as the basis for a physical file.
- B.** MGS will retain consultants on a regional basis to carry out the following steps;
1. Review additional non-government consultative sources, based on the stakeholders listed in Phase 2 “Evaluation Process”, for the four categories of cultural heritage resources.
  2. Review MGS buildings and identify the potential cultural heritage resources: note any heritage implications of pertinent MGS building sites and develop an interim listing.
  3. Document any immediate threats to the heritage features, and the implications the heritage features might have on future property management or development.
- C.** MGS will retain the consultant for Phase 1A to carry out the following step:
1. Review existing guidelines, as well as the “generic guidelines” developed in Phase 1A (step #4), and adopt/adapt relevant materials for MGS purposes, resulting in:

- (a) A Guideline for the Assessment of Archaeological Sites indicating where, when and how to access.
- (b) A Guideline for Mitigative Measures relating to projects involving heritage structures. This would describe the appropriate means of dealing with unavoidable impacts and discuss relocation, moth balling, demolition and reassembly, screening, etc.
- (c) A Guideline for Compatible Development indicating appropriate ways to build new structures which are compatible with existing buildings, districts or landscapes.

## **Phase 2:**

This phase may commence before the completion of Phase 1, and will involve the following activities:

### **A. Evaluation Process**

Using the “generic guidelines” from Phase 1A (Step #4), MGS will carry out active evaluations for specific projects, involving the collection of any necessary data, to determine the significance, options and courses of action to be documented in evaluation reports.

For specific undertakings, MGS and MCC will evaluate potential cultural heritage resources in consultation with stakeholders:

- for archaeological sites:
- contact MCC, Ministry of Natural Resources (MNR), aboriginal groups, historical societies
- for buildings and structural remains of buildings:  
contact MCC, local architectural conservation advisory councils (LACACs), historical societies, local and regional municipalities
- for districts or landscapes of historic and scenic value in rural, village and urban contexts:  
contact local and regional municipalities and LACACs
- for unorganized territories:  
contact MNR, Ministry of Municipal Affairs, aboriginal groups
- for places which hold significance because of sacred values or long traditional use:

contact aboriginal groups, local and regional municipalities

Upon approval of the MGS Parent Class EA, MGS will follow the consultation process outlined in the “Class EA Methodology” (Section 4).

**B. Inventory**

An inventory is required to capture and access heritage-related information. Based on the “interim listing” prepared as part of Phase IB (Step #2), any prevailing Information System will have fields to flag whether a property has, has not or may have heritage significance.

These “flags” must be cross-referenced to evaluation reports developed as part of the “evaluation process” which describe the heritage features in detail, identify immediate threats to them, and examine their potential implications on future property management or development.

The inventory will require ongoing maintenance, and must be readily available to MGS personnel.

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Tim Casey  
Assistant Deputy Minister  
Realty Group  
Ministry of Government Services

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Linda Stevens  
Assistant Deputy Minister  
Cultural Division  
Ministry of Culture and Communications

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## **SCHEDULE 20**

### **PAYMENTS AND HOLDBACKS**

#### **1. APPLICATIONS FOR PAYMENT**

- 1.1** The following provisions apply to progress payments on account of Additional HMQ Payments and to progress payments to be made by HMQ in respect of the period following the Substantial Completion Date, including the Certified Cost to Complete.
- 1.2** Applications for payment on account may be made monthly as the Works progress.
- 1.3** Application for payment by Project Co shall be dated the last day of the agreed monthly payment period and the amount claimed shall be:
1. with respect to the Certified Cost to Complete, based on the value, proportionate to the Cost of the Works, of the Works performed, including Products delivered to the Site at that date, and
  2. with respect to Variations or Variation Directives, the payment of which HMQ is responsible for and which are included within Additional HMQ Payments, the value of such additional Works performed, including Products delivered to the Site at that date.
- 1.4** Claims for Products delivered to the Site but not yet incorporated into the Works shall be supported by such evidence as the Independent Certifier may reasonably require to establish the value and delivery of the Products.
- 1.5** Project Co shall submit to HMQ and the Independent Certifier a WSIB Certificate of Clearance, the updated Works Schedule provided under Section 26.3 of the Project Agreement and an updated cash flow with each application for payment.
- 1.6** With each application for payment, except the final payment and release of holdback applications, Project Co shall submit a Statutory Declaration on CCDC Form 9A.

#### **2. PROGRESS PAYMENTS**

- 2.1** The Independent Certifier will issue to HMQ, no later than 10 Business Days after the receipt of an application for payment from Project Co submitted in accordance with Section 1 of this Schedule 20, a certificate addressed to HMQ of the progress of the Works. The Independent Certifier will issue a certificate for payment to HMQ of Additional HMQ Payments payable by HMQ with respect to the application for payment from Project Co in the amount applied for or in such other amount as the Independent Certifier determines to be properly due. If the Independent Certifier requires amendments to the application, the Independent Certifier will promptly notify Project Co in writing giving reasons for the amendment.

- 2.2** Payment to Project Co on account of a monthly progress payment in respect of Additional HMQ Payments, or progress payments for the period following the Substantial Completion Date in respect of the Certified Cost to Complete, shall be made no later than 10 Business Days after the date of a certificate for payment issued by the Independent Certifier.
- 2.3** As long as any HMQ Holdback is retained by HMQ or any other amount has been held back by HMQ in respect of Works completed prior to the Substantial Completion Date and remains unpaid or is deducted from the Substantial Completion Payment, applications for progress payments pursuant to this Schedule 20 will be provided to Lenders' Consultant.
- 2.4** Notwithstanding the time periods provided regarding the approval and certification of payment by the Independent Certifier in Section 2.1 of this Schedule 20, and for payment in Section 2.2 of this Schedule 20, respectively, the total period of time between receipt of the application for payment by Project Co and payment by HMQ shall be no more than 25 Business Days, except with respect to any amount held back from such payment by HMQ in accordance with the Project Agreement.

**2.5 Construction Liens**

1. Notwithstanding anything else in this Schedule 20 – Payments and Holdbacks, in the event a claim for a construction lien is registered against the Site arising from the performance of the Works, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, or HMQ receives any written notice of lien arising from the performance of the Works, HMQ shall be entitled to withhold such portion of any payment otherwise due to Project Co in an amount HMQ reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by HMQ in connection therewith, including such amount on account of costs of the lien claimant such that HMQ may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the *Construction Lien Act* (Ontario), until such time as such claim has been dealt with as provided below.
2. In the event that a written notice of a construction lien arising from the performance of the Works is received by HMQ, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, Project Co shall, within 30 days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Lien Act* (Ontario).
3. If a construction lien arising from the performance of the Works is registered against the Site, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, Project Co shall, within 30 days, at its sole expense, vacate or discharge the lien from title to the Site. If the lien is

merely vacated, Project Co shall, if requested, undertake HMQ's defence of any subsequent action commenced in respect of the lien at Project Co's expense.

4. If Project Co fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Works within the time prescribed above, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, HMQ shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by HMQ in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of Project Co, and HMQ may deduct such amounts from the amounts otherwise due or owing to Project Co.
5. Without limiting any of the foregoing, Project Co shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the Works or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against HMQ by any person that provided services or materials to the Site which constituted part of the Works.
6. The provisions of Sections 2.5.1 through 2.5.5 inclusive do not apply to construction liens (i) filed by Project Co which are claimed as a result of any default of HMQ to make payments to Project Co in accordance with the terms of the Project Agreement or (ii) filed by any HMQ Party, including for greater certainty HMQ's own forces or HMQ's other contractors, which are claimed as a result of work in relation to the Project.

### **3. PAYMENT OF HOLDBACK UPON SUBSTANTIAL COMPLETION**

**3.1** After the issuance of the Substantial Completion Certificate under Section 24.4 of the Project Agreement, Project Co shall:

1. submit an application for payment of the holdback amount;
2. submit a written request for release of holdback including a declaration that no written notices of lien arising from the performance of the Works have been received by it;
3. submit a Statutory Declaration CCDC 9A; and
4. submit an original WSIB Certificate of Clearance.

**3.2** After the later of (i) the receipt of the documents set out in Section 3.1 of this Schedule 20, and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario), the Independent Certifier shall issue a certificate for payment of the holdback amount.



**3.3** Prior to the date of the release of the holdback, Project Co shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.

**3.4** Subject to the provisions of Section 2.5 of this Schedule 20 and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Works, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the holdback amount pursuant to Section 3.2 of this Schedule 20.

**4. COMPLETION**

**4.1** Project Co shall provide As-Built Drawings and Specifications, Record Documents, spare parts and shop drawings as soon as possible and in any event within 30 days of the Substantial Completion Date.

**5. FINAL PAYMENT**

**5.1** [Intentionally Deleted]

**5.2** [Intentionally Deleted]

**5.3** [Intentionally Deleted]

**5.4** Subject to the other requirements of this Project Agreement, the unpaid balance of the Guaranteed Price shall become payable to Project Co on the later of:

1. the 2nd Business Day following the expiration of all liens pursuant to the *Construction Lien Act* (Ontario); and
2. the 10<sup>th</sup> Business Day following the Final Completion Date,

subject to HMQ's right under the Project Agreement to withhold payment from the unpaid balance of the Guaranteed Price, including for any amounts required pursuant to Section 6 of this Schedule 20, and any sums required to satisfy any lien or trust claims arising from the Works.

**6. WITHHOLDING OF PAYMENT**

**6.1** If because of climatic or other conditions reasonably beyond the control of Project Co, there are items of work that cannot be performed, payment in full for that portion of the Works which has been performed, as certified by the Independent Certifier, shall not be withheld or delayed by HMQ on account thereof, but HMQ may withhold, until the remaining portion of the Works is finished, only such amount that the Independent Certifier determines is sufficient and reasonable to cover the cost of performing such remaining Works.

**7. NON-CONFORMING WORKS**

- 7.1** No payment by HMQ under the Project Agreement nor partial or entire use or occupancy of the Works by HMQ shall constitute an acceptance of any portion of the Works or Products which are not in accordance with the requirements of the Contract Documents.

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**SCHEDULE 21**

**FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT**

The following is the form of the Assignable Subcontract Agreement referred to in Section 11.17(d) of the Project Agreement:

**THIS AGREEMENT** made as of the [•] day of [•], 201[•], between

**AIRLINX TRANSIT PARTNERS INC.**

(“**Project Co**”)

OF THE FIRST PART,

- and -

**AIRLINX TRANSIT PARTNERS JV**, an unincorporated joint venture between **AECON CONSTRUCTION AND MATERIALS LIMITED** and **DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

(“**Construction Contractor**”)

OF THE SECOND PART,

- and -

[•]

(“**Subcontractor**”)

OF THE THIRD PART,

- and –

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”)

OF THE FOURTH PART.

**WHEREAS** pursuant to a project agreement dated as of the 15<sup>th</sup> day of December, 2011 between Project Co and HMQ (such agreement, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**Project**”

**Agreement**”), Project Co has agreed to construct or cause to be constructed the Project as defined in the Project Agreement;

**AND WHEREAS** Project Co and Construction Contractor entered into a design and construction contract dated the 15<sup>th</sup> day of December, 2011 (such construction contract, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**Design and Construction Contract**”);

**AND WHEREAS** with respect to a portion of the Design and Construction Work under the Design and Construction Contract, Construction Contractor and Subcontractor entered into a subcontract dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (such subcontract together with all amendments thereto which hereafter may be made in accordance with the terms hereof, being hereinafter called the “**Subcontract**”);

**AND WHEREAS** Construction Contractor has agreed to assign to HMQ all of its right, title and interest in and to the Subcontract as collateral security for the guarantee dated 15<sup>th</sup> day of December, 2011 given by Construction Contractor in favour of HMQ (the “**Guarantee**”);

**AND WHEREAS** under the Project Agreement, Project Co has agreed to cause Construction Contractor to cause the Subcontractor to enter into this Agreement;

**NOW THEREFORE**, in consideration of the premises and the covenants herein contained, and the sum of \$2.00, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. As additional security for the observance and performance of the obligations of Construction Contractor under the Guarantee (the “**Obligations**”), Construction Contractor hereby irrevocably assigns, transfers and sets over (the “**Assignment**”) to and in favour of HMQ as and by way of a specific assignment and transfer all of the right, title and interest of Construction Contractor in, and with respect to, the Subcontract and all benefit, power and advantage to be derived therefrom and otherwise to enforce the rights of Contractor thereunder (collectively, the “**Assigned Rights**”), provided that the Assignment of the Assigned Rights provided for in this Agreement shall only be effective (i) upon the termination of the Project Agreement as a result of a default or event of default by Project Co thereunder, or (ii) assignment of the Project Agreement to a Replacement Project Co (as defined in the Lenders’ Direct Agreement dated 15<sup>th</sup> day of December, 2011 between HMQ, National Bank Financial Inc. agent to the lenders to Project Co (the “**Lenders’ Agent**”) and Project Co), and in either case such Assignment of the Assigned Rights may be exercised by HMQ at its option and in its sole and unfettered discretion at any time or times thereafter, subject to and in accordance with the provisions of this Agreement.
2. Unless and until notification is given to the Subcontractor in accordance with any of the notices referred to in Sections 3(c), 3(d) or 3(e) below, Construction Contractor shall be entitled to enforce all of the benefits and powers under the Subcontract and to deal with, and be obligated to, the Subcontractor in respect of the Subcontract and matters arising

therefrom in the same manner and to the same extent as if Construction Contractor had not made the Assignment in Section 1 hereof.

3. Subcontractor hereby:

- (a) acknowledges and consents to any Assignment that may occur pursuant to this Agreement and confirms that any such Assignment that may occur pursuant to this Agreement is permitted pursuant to the provisions of the Subcontract;
- (b) agrees to give HMQ and Lenders' Agent prompt written notice of any default by the Construction Contractor under the Subcontract ("**Notice of Default**"), which Notice of Default shall attach an executed copy of the Subcontract as well as a copy of the default notice issued by the Subcontractor to Construction Contractor. Subcontractor agrees that, upon issuance of a Notice of Default, it shall not be entitled to exercise any right it has to terminate the Subcontract for a period of 5 Business Days from the later of (i) the receipt of the Notice of Default by HMQ and Lenders' Agent, and (ii) the date that the Construction Contractor has failed to comply with any applicable cure period in the Subcontract, or, absent a cure period, the expiry of a reasonable period of time to cure such default. If either HMQ or Lenders' Agent (without any obligation to do so) notify the Subcontractor within such 5 Business Day time period that it requires more time to determine whether it can remedy such default by the Construction Contractor, or, in the case of HMQ, exercise the Assignment, Subcontractor shall not be entitled to exercise any right to terminate the Subcontract for a further period of 25 days from the date of receipt of such notice or such longer period as may be reasonably necessary to cure the default, provided that HMQ or Lenders' Agent (as the case may be) are proceeding diligently to cure such default; however, if HMQ exercises the Assignment within such further 25 day period, the Subcontractor shall not be entitled to exercise any right to terminate the Subcontract provided that the Assignee (and if applicable, the GC Assignee) agrees to assume the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers the form of assumption notice attached hereto as Appendix A (the "**Assumption Agreement**"). In the event that HMQ or Lenders' Agent initiates the further 25 day period, referred to above, the Assignee (and if applicable, the GC Assignee) shall compensate the Subcontractor for costs and expenses reasonably incurred for Works performed by the Subcontractor during such further 25 day period including, but not limited to, mobilization and demobilization costs, provided mobilization and demobilization costs are warranted in the context;
- (c) agrees that, immediately upon receipt by Subcontractor of written notice (the "**Assignment Notice**") from HMQ that the Subcontract is being assigned to HMQ, Lenders' Agent's or HMQ's nominee (in any event, such party identified in such written notice being the "**Assignee**"), and that the Assignment is pursuant to Section 1, and provided that the Assignee, except as limited herein, agrees to perform its obligations under this Agreement and agrees to assume all of the obligations of the Construction Contractor under the Subcontract and, in that

regard, executes and delivers an Assumption Agreement, the Assignee shall have all of the right, title, benefit and interest of Construction Contractor pursuant to the Subcontract, without Subcontractor's consent and, subject to Section 4(b), without the payment of any penalty, and the Subcontractor shall deal with the Assignee as if it had been originally named in place of Construction Contractor in the Subcontract;

- (d) agrees that the Assignee may, at any time after the giving of the Assignment Notice in Section 3(c) above, give written notice (the "**Successive Assignment Notice**") to Subcontractor of a further assignment of the Subcontract to a new general contractor of the Project (the "**GC Assignee**"), and that immediately upon receipt of the Successive Assignment Notice, and provided that the GC Assignee, except as limited herein, agrees to assume all of the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the GC Assignee shall have all of the right, title, benefit and interest of Construction Contractor pursuant to the Subcontract without Subcontractor's consent and, subject to Section 4(b), without the payment of any penalty and Subcontractor shall deal with the GC Assignee as if it had been originally named in place of Construction Contractor in the Subcontract;
  - (e) agrees that, notwithstanding Sections 3(c) and 3(d) herein contained, HMQ may give written notice (the "**Direct Assignment Notice**") to Subcontractor of the assignment of the Subcontract directly to the GC Assignee, and that immediately upon receipt of the Direct Assignment Notice, and provided that the GC Assignee, except as limited herein, agrees to assume all of the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the GC Assignee shall have all of the right, title, benefit and interest of Construction Contractor pursuant to the Subcontract without Subcontractor's consent and, subject to Section 4(b), without the payment of any penalty and Subcontractor shall deal with the GC Assignee as if it had been originally named in place of Construction Contractor in the Subcontract; and
  - (f) agrees, upon the reasonable request of HMQ from time to time, to provide a certificate to HMQ as to the status of the Subcontract, including a description of any events which, with the passage of time or the giving of notice or both, would constitute a default thereunder.
4. (a) Nothing herein contained shall render HMQ or Lenders' Agent liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of Construction Contractor under the Subcontract, unless and until HMQ has given the Assignment Notice to Subcontractor, the giving of which Assignment Notice Subcontractor acknowledges is in the sole and unfettered discretion of HMQ, in which event, the Assignee (and if applicable, any GC Assignee) shall, subject to the provisions of 4(b), (c), (d), (e) and (f) hereof, then become liable for all the obligations, covenants and agreements of Construction Contractor under the Subcontract, provided that from and after the

date of the Successive Assignment Notice to Subcontractor, the Assignee shall have no liability whatsoever to Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under such Subcontract from and after the date of the Successive Assignment Notice, and provided further, that if HMQ gives the Direct Assignment Notice, HMQ or Lenders' Agent shall have no liability whatsoever to Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under the Subcontract at any time, provided in the event of a Successive Assignment Notice or Direct Assignment Notice, the Assignee thereunder shall, except as limited herein, become liable for all of the obligations, covenants, and agreements of the Construction Contractor under the Subcontract;

- (b) Notwithstanding the provisions of Section 4(a), with respect to the period preceding the effective date of the Assignment (the "Pre-Assignment Period"), the only obligations, covenants and agreements of Contractor that Assignee (and if applicable, the GC Assignee) shall be liable for are those payment obligations of Construction Contractor under the Subcontract relating to progress payments outstanding as of the date of the Assignment, claims for payment for change orders, and any other payment obligations relating to claims for delay and acceleration in respect of the performance of the Subcontract and any alleged changes to the schedule which may remain unpaid or outstanding on the date of the Assignment;
- (c) Notwithstanding Section 4(b), the Subcontractor acknowledges and agrees that if during the Pre-Assignment Period, HMQ or Lenders' Agent has made a proper payment to Project Co or the Construction Contractor on account of Design and Construction Work performed by the Subcontractor and the Construction Contractor has failed to make payment to the Subcontractor, the Assignee (and if applicable, the GC Assignee) shall not be responsible for payment of such amount to the Subcontractor;
- (d) Subject to Section 4(c), if, at the date of the Assignment, there are amounts in dispute between the Construction Contractor and Subcontractor relating to the Subcontract as provided for in Section 4(b) hereof, the Assignee shall only be liable for such amounts once the Subcontractor has established entitlement to the amounts claimed under the Subcontract. The Subcontractor acknowledges and agrees that in its assessment of the outstanding claims relating to the Pre-Assignment Period, Assignee (and if applicable, the GC Assignee) shall require a reasonable period of time to review and assess the validity and reasonableness of the claims. Subcontractor shall provide such further information as is reasonably necessary to allow Assignee (and if applicable, the GC Assignee) to make its determination. If the parties cannot agree on the reasonableness of the amounts claimed, then the parties shall seek to establish a mutually agreed dispute resolution process. If such dispute resolution process is not agreed to within 15 days of notice from the Assignee (and if applicable, the GC Assignee), then either party may resort to litigation to resolve the dispute;

- (e) Except for liability in respect of claims set out in Section 4(b) hereof, neither the Lenders' Agent nor HMQ shall be liable for any other claim for injuries, losses, damages, interest, costs, indemnity, fines, penalties, legal and professional fees and assessments or amounts of any kind whatsoever (including any loss or damage not yet ascertained as at the date of the Assignment) that Subcontractor has as of the date of the Assignment or otherwise shall or hereafter may have for or by reason of or in any way arising out of any cause, matter or thing whatsoever, existing to the effective date of the Assignment; and
  - (f) Subcontractor shall reimburse the Assignee (and if applicable any GC Assignee) for any amounts paid or pre-paid to the Subcontractor by the Assignee (and if applicable any GC Assignee) under Section 4(c) in respect of which the Subcontractor at any time during or after the Pre-Assignment Period has been paid, pre-paid, reimbursed or refunded, directly or through set-off, by HMQ, Project Co, any Project Co Party or any other person on account of work performed or services rendered by Subcontractor during the Pre-Assignment Period.
5. Subcontractor acknowledges and agrees that all of the right, title and interest of Construction Contractor in the Subcontract have been, or may be, without the consent of the Subcontractor or the payment of any penalty or, subject to Section 4(b), other amount, assigned to Lenders' Agent as security for the obligations of Project Co and/or Construction Contractor to Lenders' Agent and that Lenders' Agent may, upon written notification being given to the Subcontractor by Lenders' Agent, that Lenders' Agent is entitled to do so, exercise all of the rights of Construction Contractor under the Subcontract to the same extent as if Lenders' Agent had been originally named in the place of Construction Contractor in the Subcontract, provided the Lenders' Agent, except as limited herein, agrees to assume all of the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement.
6. Project Co agrees that all costs and expenses incurred by HMQ or Lenders' Agent in curing or attempting to cure any default by Construction Contractor under the Subcontract, together with interest thereon at the Default Interest Rate (as defined in the Project Agreement) shall be payable by Project Co to HMQ or Lenders' Agent, as the case may be, on demand. Without limiting the foregoing, if Project Co fails to make any such payment to HMQ as required hereunder, the amount of such payment shall be deemed to be an amount which is due to HMQ by Project Co pursuant to the terms of the Project Agreement.
7. Any notice, request or demand required or permitted to be given hereunder shall be in writing and shall be served personally, sent by prepaid registered mail or by confirmed facsimile transmission addressed as follows:

in the case of Project Co:

**[REDACTED]**



Fax: [REDACTED]  
Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

in the case of Construction Contractor:

[REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

in the case of the Subcontractor:

[•]

Attention: [•]  
Fax: [•]

in the case of HMQ:

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

Attention: [REDACTED]  
Fax: [REDACTED]

With a copy to:

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

Attention: [REDACTED]  
Fax: [REDACTED]

with a copy to the HMQ Representative:

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

Attention: [REDACTED]  
Fax: [REDACTED]

with a copy to Lenders' Agent:

[REDACTED]

Attn: [REDACTED]  
Fax No: [REDACTED]

with a copy to:

[REDACTED]

Attn: [REDACTED]  
Fax No: [REDACTED]

Any party may from time to time change its address and recipient for service by notice to the other party or parties given in the manner aforesaid.

Notices which are served in the manner aforesaid shall be deemed sufficiently served for all purposes of this Agreement, in the case of those personally served or transmitted by facsimile transmission, on the date of such service or transmission, provided same is a Business Day (as hereinafter defined), and if not on the next following Business Day, and in the case of those given by registered mail, on 5 Business Days following the mailing thereof. Provided that in the event normal mail service is interrupted by strikes, slow-down or other cause, then the party sending the notice shall utilise any similar service which has not been so interrupted in order to ensure the prompt receipt of the notice, request or demand by the other party or parties, and for the purpose of this Section such service shall be deemed to be personal service or facsimile transmission. Business Day shall mean a day which is not: (i) a Saturday or Sunday; or (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

8. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

9. This Agreement shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
10. Subcontractor shall from time to time and at all times hereafter, upon the reasonable written request of HMQ so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of HMQ, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.
11. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the parties have executed this Assignable Subcontract Agreement by affixing their corporate seals under the hands of their proper signing officers duly authorized in that behalf.

**AIRLINX TRANSIT PARTNERS INC.**

Per:

\_\_\_\_\_  
Name: [REDACTED]

Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

**[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT]**

**[SUBCONTRACTOR]**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the corporation

**[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT]**

**AIRLIX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC. BY:**

**AECON CONSTRUCTION AND MATERIALS LTD.**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT]**

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

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I have authority to bind the corporation.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT]**

**APPENDIX A**

**FORM OF ASSUMPTION AGREEMENT**

\_\_\_\_\_, 20\_\_

**[Subcontractor]**

**Re. Assignable Subcontract Agreement dated \_\_\_\_\_, 20\_\_ between [Name of Project Co], [Name of Construction Contractor], [Name of Subcontractor] and HMQ (the “ASA”)**

With reference to the [Assignment Notice / Successive Assignment Notice/Direct Assignment Notice] dated \_\_\_\_\_, 20\_\_, [Name of Assignee or GC Assignee] hereby agrees to assume all of the obligations of the Construction Contractor to the Subcontractor under the Subcontract dated \_\_\_\_\_, 20\_\_, and perform the obligations under the ASA, all in accordance with the provisions of the ASA.

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

Yours truly,

[Name of Assignee or GC Assignee]

TOR01: 4577714: v14



## SCHEDULE 22

### VARIATION PROCEDURE

#### 1. VARIATIONS

##### 1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
  - (ii) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
  - (iii) “**Estimate**” has the meaning given in Section 1.4(a) of this Schedule 22.
  - (iv) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a) of this Schedule 22.
  - (v) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
  - (vi) “**Variation Confirmation**” has the meaning given in Section 1.7(a)(ii) of this Schedule 22.
  - (vii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the HMQ Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (viii) “**Variation Enquiry**” has the meaning given in Section 1.3(a) of this Schedule 22.

##### 1.2 General

- (a) HMQ has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22 provided that HMQ shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which HMQ is obligated to proceed with a Variation.
- (b) HMQ shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.

- (c) Project Co will not be entitled to any payment, compensation or extension of the Contract Time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

### **1.3 Variation Enquiry**

- (a) If HMQ proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
- (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether HMQ intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price, (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
  - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

### **1.4 Delivery of Estimate**

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

### **1.5 Project Co Grounds for Objection**

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to HMQ’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe Applicable Law;

- (B) cause to be revoked any of the existing Permits, Licences, Approvals or Agreements required by Project Co to perform the Works, and any such Permit, Licence, Approval or Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
  - (C) require any new Permits, Licences, Approvals or Agreements for Project Co to perform the Works, any of which will not, using commercially reasonable efforts by Project Co or HMQ, as applicable, be obtainable;
  - (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
  - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
  - (v) HMQ does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
  - (vi) the Variation would, if implemented, result in a change in the essential nature of the ARL Spur Line and ARL T1 Station;
  - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof); or
  - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to HMQ a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

## **1.6 Estimate Requirements**

- (a) Unless HMQ in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to HMQ's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
  - (ii) any impact on the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the ARL Spur Line and ARL T1 Station and

- completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iii) any impact on the performance of the Works and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
  - (iv) any amendments to this Project Agreement or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of HMQ to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
  - (v) any impact on the Direct Costs of Project Co and the Subcontractors, including:
    - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or HMQ); and
    - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
  - (vi) either, subject to Section 1.9:
    - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
    - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
  - (vii) Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
  - (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
  - (ix) the proposed methods of certification of any construction or operational aspect of the Works required by the Variation if not covered by the provisions of this Project Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to HMQ's satisfaction, acting reasonably, that:
- (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) all costs of Project Co and the Subcontractors are limited to Direct Costs;
  - (iii) Project Co and the Construction Contractor shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or the Construction Contractor is calculated on any other margin of Project Co or the Construction Contractor), and no other margins or mark-ups;
  - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor;
  - (v) all costs of providing Works, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
    - (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
  - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Works, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to HMQ, including using commercially reasonable efforts to mitigate such costs.

- (d) As soon as practicable, and in any event not more than 15 Business Days after HMQ receives an Estimate, Project Co and HMQ shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If HMQ would be required by Applicable Law or any policy applicable to HMQ to competitively tender any contract in relation to the proposed Variation, HMQ may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) HMQ may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify HMQ in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

### **1.7 Variation Confirmation**

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ shall either:
  - (i) subject to Sections 1.2(b) and 1.7(e), withdraw the Variation Enquiry by written notice to Project Co; or
  - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.8.
- (b) If HMQ does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.7(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.8:
  - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of the Contract Time and including provision for payment to Project Co as provided in Section 1.10;
  - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.7(c)(i), all provisions of this Project Agreement applicable to the Works shall apply to the

Works as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and

- (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.7(c)(i).
- (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 HMQ in its sole discretion; or
  - (ii) HMQ in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
  - (i) the determination of whether or not to proceed with a Variation shall at all times be at HMQ's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 27 - Dispute Resolution Procedure; and
  - (ii) HMQ may at any time withdraw a Variation Enquiry and, subject to Section 1.7(f), HMQ shall not be obligated to Project Co in respect of a Variation until such time as HMQ in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by HMQ or HMQ has waived such requirement,

provided that HMQ may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where HMQ is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, HMQ shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

## **1.8 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 HMQ requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and HMQ, provided that, Project Co shall not be required to seek financing from any source other than the Lenders.

- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and HMQ within 60 days of the date that HMQ issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) Subject to Section 1.9, if Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide HMQ with details of such financing, and HMQ shall, in its Sole Discretion, determine whether Project Co should proceed with such financing. If HMQ determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its Sole Discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) Subject to Section 1.9, HMQ may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ in its sole discretion waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) Subject to Section 1.9, if HMQ waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and HMQ shall pay for the Variation as provided for in Section 1.10(a)(i).

### **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 HMQ, together with a certificate of the Lenders' Agent addressed to Project Co (which will expressly provide that the certificate may be relied upon by HMQ) verifying such calculations. HMQ 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 Lenders standard banking practices and the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices. HMQ may, in its Sole Discretion, elect to apply any portion of the Schedule Cushion to any extension of the Contract Time otherwise determined under a Variation, with the result that such extension of the Contract Time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion that HMQ has elected to apply, and the determination of the increase in the Cost of the Financing associated with such Variation shall be recalculated based on the remaining extension of the Contract Time, if any, under such Variation after such application by HMQ of the Schedule Cushion. 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 HMQ.

### **1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by HMQ, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Guaranteed Price shall be adjusted as set out in the Variation Confirmation;
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
    - (A) HMQ shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by HMQ and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by HMQ; and
    - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event HMQ and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by HMQ (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by HMQ in time to make payments to that third party in accordance with its contract with Project Co.

- (b) HMQ shall make payment to Project Co within 20 Business Days of receipt by HMQ of invoices presented to HMQ in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by HMQ in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Lien Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, HMQ shall provide to Project Co copies of any consent or approval issued by HMQ in connection with a proposed Variation.

### **1.11 Reduction in Works**

- (a) If a Variation involves any reduction in Works which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and the Substantial Completion Payment or the balance of the Guaranteed Price, as applicable, shall be reduced accordingly.

### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by HMQ and Project Co or if there is a Dispute in relation thereto or if HMQ, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then HMQ may issue a Variation Directive and, following receipt of the Variation Directive:
  - (i) Project Co shall promptly proceed with the Variation;
  - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
  - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier or the HMQ Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, HMQ shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(i).

## **2. PROJECT CO VARIATIONS**

### **2.1 General**

- (a) Project Co shall deliver to HMQ a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

### **2.2 Project Co Variation Notice**

- (a) A Project Co Variation Notice shall:
  - (i) set out details of the proposed Variation in sufficient detail to enable HMQ to evaluate it in full;
  - (ii) specify Project Co’s reasons for proposing the Variation;
  - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to HMQ; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If HMQ, in its sole discretion, elects to consider the Variation proposed by Project Co, HMQ may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.

## **3. SMALL WORKS**

### **3.1 General**

- (a) Project Co shall carry out all Small Works requested by HMQ.
- (b) If Small Works are requested by HMQ, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide HMQ with a price for carrying out the Small Works.
- (c) If Project Co’s price is accepted by HMQ, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (d) HMQ may at any time, in its sole discretion, including if HMQ does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.
- (e) Project Co’s price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

**3.2 Project Co to Minimize Inconvenience**

- (a) Project Co shall notify HMQ of the estimated duration of any Small Works so that HMQ and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to HMQ. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

## APPENDIX A

### CALCULATION OF DIRECT COSTS

#### 1. DIRECT COSTS

**1.1** Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or the Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of Project Co or the Subcontractors while performing that part of the Works on Site;
- (ii) salaries, wages and benefits of Project Co’s or the Subcontractors’ personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co’s or the Subcontractors’ office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of Project Co’s or the Subcontractors officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (viii) deposits lost;
- (ix) the amount of all Subcontracts with the Subcontractors;

- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by HMQ, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A and without limiting the obligation of HMQ to pay HST under this Project Agreement, Taxes, but excluding:
  - (A) HST;
  - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
  - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing as calculated pursuant to Section 1.9, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to HMQ;
- (xviii) the cost of any additional insurance or performance security required or approved by HMQ;

- (xix) the cost of obtaining all Permits, Licences, Approvals and Agreements; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

**1.2** The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Works as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Toronto, Ontario; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Works.

**APPENDIX B**

**APPLICABLE MARGINS**

<b>Party</b>	<b>Total Overhead and Profit Margin (as % of Direct Cost)</b>		
	<i>For projects under \$100,000</i>	<i>For projects between \$100,000 and \$1,000,000</i>	<i>For projects over \$1,000,000</i>
Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

Subject to Section 1.9 of this Schedule 22, where HMQ elects to apply all or any portion of the number of days of the Schedule Cushion, the applicable overhead and profit margin shall be reduced by twenty percent ([REDACTED]%) and applied to the entire scope of the applicable Variation.

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**SCHEDULE 23  
COMPENSATION ON TERMINATION**

**1. DEFINITIONS**

**1.1 Definitions**

- (a) All capitalized terms not otherwise defined in this Schedule shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:
- (b) **“Debt Amount”** means all accrued and unpaid interest and any “make whole” payments or breakage fees (less any breakage benefits) which Project Co is obligated to pay to the Lenders’ Agent pursuant to the Lending Agreements, together with the outstanding principal amount of debt funded under the Lending Agreements.
- (c) **“Default Termination Payment”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (d) **“Demobilization Costs”** means all reasonable costs of Project Co associated with the demobilization of the Works as a result of the termination of the Project Agreement.
- (e) **“Invoice Date”** means the date that is the later of:
  - (i) the date on which HMQ receives an invoice from Project Co for the Non-Default Termination Sum; and
  - (ii) the date on which HMQ receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule 23.
- (f) **“Non-Default Termination Sum”** has the meaning given in Section 3.1(b) of this Schedule 23.
- (g) **“Project Co Amount”** means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, pro rated 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.
- (h) **“Termination Date”** has the meaning given in the Project Agreement.
- (i) **“Works”** has the meaning given in the Project Agreement.

## **2. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT**

### **2.1 Compensation**

- (a) If HMQ terminates the Project Agreement pursuant to Section 34.3(a) of the Project Agreement, HMQ shall pay the Default Termination Payment to Project Co.
- (b) The “Default Termination Payment” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
  - (i) all Additional HMQ Payments and Base Progress Payments paid by HMQ on or before the Termination Date;
  - (ii) HMQ’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 other consultants and including all reasonable and proper costs incurred by HMQ in re-tendering the Works or any portion thereof;
  - (iii) HMQ’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by HMQ as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Project Agreement and out of the termination together with all costs of entering into a new construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as the Project Agreement;
  - (iv) the HMQ Holdback as at the time the Default Termination Payment is required to be made; and
  - (v) the Legislative Holdback required to be maintained by HMQ as at the time the Default Termination Payment is required to be made, which amount will be paid by HMQ in accordance with the *Construction Lien Act* (Ontario).
- (c) To the extent that any amounts that HMQ has estimated or determined pursuant to Sections 2.1(b)(ii), 2.1(b)(iii) or 2.1(b)(iv) above, are in excess of what is required by HMQ to complete the Works or compensate for Direct Losses, the HMQ Holdback or the Legislative Holdback, as applicable, HMQ shall promptly return such excess amounts to Project Co.
- (d) HMQ shall pay the Default Termination Payment in accordance with Article 4 of this Schedule 23.

### **3. COMPENSATION ON NON-DEFAULT TERMINATION**

#### **3.1 Compensation**

- (a) If Project Co terminates the Project Agreement pursuant to Sections 35.2(a)(ii) or 36.2(b) of the Project Agreement or if HMQ terminates the Project Agreement pursuant to Sections 36.2(a) or 36.3(a) of the Project Agreement, HMQ shall, in each case, pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:
  - (i) all unpaid Base Progress Payments and Additional HMQ Payments properly due and payable under the Design and Construction Contract and the Project Agreement to and including the Termination Date and any Cost of the Financing directly related to such Base Progress Payments, to the extent not funded under the Lending Agreements as part of the Debt Amount;
  - (ii) all Demobilization Costs;
  - (iii) the Debt Amount calculated as at the date of payment of the Non-Default Termination Sum to Project Co;
  - (iv) the Project Co Amount calculated as at the date of payment of the Non-Default Termination Sum to Project Co; and
  - (v) all other Direct Losses suffered, sustained or incurred by Project Co and the Construction Contractor as a result of, or arising out of, the event or events which have resulted in the termination of the Project Agreement and out of the terminationless the aggregate of (A) and (B) of this Section 3.1(b):
  - (A) the HMQ Holdback as at the time the Non-Default Termination Sum is required to be made; and
  - (B) any Legislative Holdback required to be maintained by HMQ at the time the Non-Default Termination Sum is required to be made.
- (c) To the extent that any amounts that HMQ has determined pursuant to Section 3.1(b)(A) or (B) above are in excess of what is required by HMQ to holdback under the Project Agreement or maintain as Legislative Holdback, as applicable, HMQ shall promptly return such excess amounts to Project Co.
- (d) HMQ shall pay the Non-Default Termination Sum in accordance with Article 4 of this Schedule 23.

## **4. GENERAL**

### **4.1 Payment**

- (a) In the event of a termination referred to in Section 3.1(a) of this Schedule 23, as soon as practicable, and in any event, within 60 days, after the Termination Date, Project Co shall give to HMQ an invoice for the Non-Default Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the Non-Default Termination Sum, including a detailed breakdown of each of the individual items comprising such sum. To the extent the Non-Default Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.
- (b) HMQ shall pay to Project Co the Non-Default Termination Sum within 60 days after the Invoice Date and so long as all demobilization of the Works has been completed.
- (c) In the event of a termination referred to in Section 2.1(a) of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, HMQ shall calculate and notify Project Co of the Default Termination Payment under Section 2.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (d) HMQ shall pay to Project Co the Default Termination Payment as soon as reasonably practicable, and in any event within 30 days after delivering the notice described in Section 4.1(c) of this Schedule 23.
- (e) Notwithstanding anything to the contrary contained herein, in no event will the Default Termination Payment be greater than the Non-Default Termination Sum.

### **4.2 Costs**

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum due pursuant to this Schedule 23 shall only be such costs and expenses that are reasonable and proper in quantum and that have been or will be reasonably and properly incurred.

### **4.3 Undisputed Amounts**

Either HMQ or Project Co may dispute the calculation of any Compensation Payment and in the event of a dispute, any undisputed amount shall be paid in accordance with this Schedule 23 and the disputed amount shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure. Notwithstanding the foregoing, in the event any disputed amount exceeds \$[REDACTED], either party may proceed to court for the resolution of such dispute.

#### **4.4 Outstanding Debt Amount**

- (a) Subject to Section 4.3 of this Schedule 23, HMQ shall be entitled to rely on a certificate of the Lenders' Agent as conclusive evidence as to the Debt Amount outstanding 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 Debt Amount, such receipt or other acknowledgement shall discharge HMQ's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

#### **4.5 Set-off**

HMQ shall be entitled to set off against the Non-Default Termination Sum or the Default Termination Payment, such amounts not already taken into account in calculating the relevant Compensation Payment that HMQ is entitled to set off or withhold pursuant to the Project Agreement, provided that the amount paid to Project Co on account of the Non-Default Termination Sum shall never be less than the Debt Amount.

#### **4.6 Full and Final Settlement**

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule 23, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule 23 in the total amount owing thereunder shall be in full and final settlement of any claims, demands and proceedings of Project Co and HMQ and each shall be released from all liability to the other in relation to any breaches or other events leading to the termination of the Project Agreement and the circumstances leading to such breach or termination, and Project Co and HMQ shall be excluded from 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 4.6(a) of this Schedule 23 shall be without prejudice to any liability, whether arising before, on or after the Termination Date, of either Party to the other, including under the indemnities contained in the Project Agreement that arose with respect to acts or omissions on or prior to the Termination Date (but not from termination itself or the events leading to such termination), to the extent such liability has not already been taken into account in calculating the relevant Compensation Payment to Section 4.5 of this Schedule 23.
- (c) Project Co acknowledges that under the provisions of Section 4.9 of the Project Agreement, HMQ shall pay the Compensation Payment to Project Co and Project Co has irrevocably directed HMQ to make the Compensation Payment to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. HMQ acknowledges such direction and agrees to pay the Compensation Payment to the Lenders' Agent or as the Lenders' Agent may direct in accordance with such direction. Project Co acknowledges and agrees

that payment by HMQ of the Compensation Payment in accordance with any such direction constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to make:

- (i) the Compensation Payment under the Project Agreement; and
- (ii) any payment to Project Co under the Project Agreement, to the extent made in relation to the Guaranteed Price,

as the case may be, and in satisfaction of any trust obligation of HMQ in respect of such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

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**SCHEDULE 24  
FINANCIAL MODEL**

**[REDACTED]**

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**SCHEDULE 25  
INSURANCE AND PERFORMANCE SECURITY**

**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 Infrastructure Ontario Construction Insurance Program (“**IOICIP**”) the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
- (c) Project Specific Professional Liability; and
- (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).

**1.2** Subject to Section 6, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) 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 by HMQ or by Project Co, shall in no way limit



Project Co's liability or obligations to HMQ or HMQ's liability or obligations to Project Co, as applicable.

**3. ADDITIONAL COVER**

**3.1** Without prejudice to the other provisions of this Schedule 25, HMQ and Project Co shall, at all relevant times and at their own expense, obtain and maintain those insurances which they are required to obtain and maintain by Applicable Law, or that they consider necessary.

**3.2** HMQ reserves the right to require Project Co to purchase such additional insurance coverage as HMQ may reasonably require. HMQ also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as HMQ may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by HMQ and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of HMQ.

**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 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 HMQ and Project Co shall, and shall require the HMQ Parties and the Project Co Parties, respectively, to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and HMQ (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**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 from insurers licensed in the Province of Ontario; 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 Canadian insurance market.

Project Co has the onus of demonstrating, to HMQ’s reasonable satisfaction that the foregoing definition applies to a particular risk.

**6.2** Project Co shall notify HMQ as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide HMQ with all relevant details in relation to such risk, including a copy of the relevant insurance policy.

**6.3** Project Co and HMQ 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 HMQ 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 HMQ, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 6.2, HMQ may, in its absolute discretion, either:

- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal installments 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 4.9 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 4.9 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, HMQ may, in its absolute discretion, either:

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
- (b) terminate this Project Agreement in accordance with Section 4.9 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 4.9 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 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 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 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.

**6.8** From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

## **7. TOTAL OR SUBSTANTIAL DESTRUCTION**

**7.1** In the event of damage to, or destruction of, all or substantially all of the Project 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 Project 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 HMQ 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 by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
  - (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the 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 HMQ, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to HMQ, acting reasonably.

**10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 10.1** All insurance provided by Project Co, shall:
- (a) include Project Co, HMQ, IO and Metrolinx as Named Insureds to the extent specified in Appendix A of this Schedule 25;
  - (b) include HMQ, IO, Metrolinx as Additional Insureds, or loss payees with the Lenders' Agent as loss payee and as an Additional Insured, as their interests may appear, 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 Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against HMQ, HMQ Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;

- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to HMQ, without any right of contribution of any insurance carried by HMQ.

## **11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 11.1** Prior to the commencement of any part of the Works, Project Co will provide HMQ with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 11.2** Prior to the commencement of any part of the Works, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to HMQ no later than 90 days after execution of this Project Agreement.

## **12. FAILURE TO MEET INSURANCE REQUIREMENTS**

- 12.1** If Project Co fails to obtain or maintain the insurance required by this Schedule 25, fails to furnish to HMQ a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then HMQ shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at HMQ's option, be payable by Project Co to HMQ on demand or be deducted by HMQ from the next payment or payments otherwise due to Project Co.
- 12.2** If coverage under any insurance policy required to be obtained by Project Co should lapse, be terminated or be cancelled, then, if directed by HMQ, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

## **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 HMQ 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 HMQ 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 HMQ, 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 by Project Co in accordance with this Schedule 25 shall be issued by financially sound Insurers acceptable to HMQ 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 HMQ 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 by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to HMQ, 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 HMQ, original executed and sealed Bonds in the forms attached as Appendices B and C respectively, to this Schedule 25 on the Financial Close Target Date, each in an amount equal to [REDACTED]% of the Cost of the Works under the Project Agreement. 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 HMQ 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. Furthermore, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Warranty Period, and instead, warranty obligations will be exclusively secured by the Warranty Letter of Credit and the Performance Guarantee of Construction Guarantor.

**18. INSURANCE TRUST AGREEMENT**

- 18.1** All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion which, in each case, relate to equipment purchased by HMQ, shall be payable solely to HMQ and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

APPENDIX A TO SCHEDULE 25  
INSURANCE REQUIREMENTS

**Works Phase Insurance – ARL Spur Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>"All Risks" Course of Construction Property Including Boiler and Machinery</b>	<p>Value declared to be equal to the estimated completed project value of the Project, including Property of Every Description and all other property supplied by HMQ or HMQ Parties for incorporation into the Project.</p> <p>All Existing Equipment from the start of decommissioning or removal from its original location, by or on behalf of Project Co, until such existing equipment has been relocated to the Project and has become HMQ's responsibility.</p> <p>Soft Costs \$[REDACTED] million (representing [REDACTED]% of Recurring / Continuing Soft Costs)</p> <p>Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> </ul>	<p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] Testing and Commissioning</p> <p>\$[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p>	<p>"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler &amp; Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ or the Lenders.</p>	TBD



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Transit</li> <li>• Unnamed locations</li> <li>• Bylaws (with respect to Existing or Renovated Buildings) (minimum \$[REDACTED] sub-limit)</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Off Premises Services (\$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Defence Costs (subject to a \$[REDACTED] sub-limit)</li> <li>• Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or medical</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>equipment and subject to a \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>• Civil Authority Access Interruption (8 weeks)</li> <li>• Prevention of Ingress/Egress (8 weeks)</li> <li>• Permission for Partial Occupancy prior to Substantial Completion</li> <li>• Cost of Carrying Project Financing (N/A Months), included in Delayed Start-Up or Soft Costs coverage</li> <li>• Margin of Profit Extension for Contractors</li> <li>• Testing and Commissioning (120 limitation each component)</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard</li> <li>• War risk</li> <li>• Terrorism</li> <li>• Nuclear or radioactive contamination, except re</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	radioactive isotopes intended for scientific, medical, industrial or commercial use	<ul style="list-style-type: none"> <li>• Contractors' equipment</li> </ul>		
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, Lenders, Lenders' Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, and HMQ, as their respective interests may appear</li> <li>• No provision permitted allowing a coinsurance penalty</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Additional key extensions of coverage:                             <ul style="list-style-type: none"> <li>– Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project</li> <li>– Losses payable in accordance with the Insurance Trust Agreement</li> <li>– Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, HMQ, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing</li> <li>– Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded</li> <li>– Liberalization Clause</li> <li>– Errors and Omissions</li> <li>– Breach of Conditions</li> <li>– Interims Payments Clause</li> </ul> </li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 14 of this Schedule 25.			

### Works Phase Insurance – ARL Spur Project

#### From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

#### Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
<p><b>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability</b></p>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Non-Owned Automobile Liability</li> <li>• \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• \$[REDACTED] “All Risks” Tenants’ Legal Liability</li> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> <li>• \$[REDACTED] Employee Benefits Administrative Errors and Omissions</li> <li>• \$[REDACTED] Contractors Rework</li> <li>• \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94)</li> <li>• \$[REDACTED] /\$[REDACTED] Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• HMQ’s and Contractor’s Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground</li> </ul>	<p>[\$REDACTED] per occurrence</p> <p>[\$REDACTED] per claim with respect to Contractors Rework</p> <p>[\$REDACTED] per claim with respect to each SEF 94, Tenants’ Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</p>	<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the Final Completion Date.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Final Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, MTO, MOI or the Lenders.</p>	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<p>surface/tunnelling/grading, and similar operations associated with the Works, as applicable</p> <ul style="list-style-type: none"> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li> <li>• Non-Owned Automobile Liability</li> <li>• Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub-limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Accident Benefits</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose,</li> </ul>			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• at the Project Site</li> <li>• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co and its Affiliates, HMQ, the Lenders, Project Co parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants, (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds</li> <li>• MTO, MOI as Additional Insureds</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>• Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>• Waiver of subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, HMQ, MTO, MOI, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 14 of this Schedule 25.			

**Works Phase Insurance – ARL Spur Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
Project Specific Professional Liability	<p>[\$REDACTED] minimum per claim / [\$REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments).</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Primary insurance extension</li> <li>• Automatic addition of firms</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the Named Insured under a personal services contract</li> <li>• Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act</li> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> </ul>	[\$REDACTED] per claim	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to Substantial Completion plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, MTO, MOI or the Lenders</p>	

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• Duty to defend, even if the allegations are groundless, false or fraudulent</li> <li>• Worldwide Territory, subject to suits brought in Canada</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Express warranties or guarantees</li> <li>• Estimates on profit, return</li> <li>• Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents</li> <li>• Design or manufacture of any good or products sold or supplied by the Named Insured</li> <li>• Terrorism</li> <li>• Nuclear Liability</li> <li>• Judgments and awards deemed uninsurable by law</li> <li>• Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>• Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees</li> <li>• Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies</li> <li>• Design work</li> </ul>			



Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
<i>Comments</i>				
<b>Underwriters</b>			<ul style="list-style-type: none"> <li>Principal underwriters in compliance with Clause 16 of this Schedule 25.</li> </ul>	

**Works Phase Insurance – ARL Spur Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p><b>Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):</b></p> <p>Combined Limit subject to Contractors' Pollution Legal Liability with a minimum \$[REDACTED] sub-limit</p>	<p>\$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>Hazardous Substances occurring at or emanating from the ARL Spur Line and ARL T1 Station or Site during the Policy Period</li> <li>Microbial Matter (including Fungus/Mould)</li> <li>Underground / above ground storage tanks</li> <li>First Party Restoration and Clean-up Costs</li> <li>Disposal Site Extension, including Transportation (reporting required)</li> <li>Duty to Defend</li> <li>Canada and US Territory</li> <li>Contractual Liability</li> <li>Emergency Response Costs</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Terrorism</li> <li>War</li> <li>Intentional Non-compliance</li> </ul>	<p>\$[REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after the Substantial Completion Date.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, MTO, MOI or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• Prior Knowledge</li> <li>• WSIB</li> <li>• Employers' Liability</li> <li>• Professional Liability</li> <li>• Nuclear Liability</li> <li>• Property Damage to Motor Vehicles during Transportation</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants</li> <li>• HMQ, MTO, MOI and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li> <li>• The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 14 of this Schedule 25.			

**Works Phase Insurance – ARL Spur Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided by Project Co**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form for all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ, MTO, MOI and the Lenders.</p>	
<p><b>Commercial General Liability and Non-Owned Automobile Liability</b></p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations Liability, and</p>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co's Construction Contractor</p> <p>[\$REDACTED] each occurrence and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project Co's Construction Contractor):</p> <ul style="list-style-type: none"> <li>Full policy limits with respect to Non-Owned Automobile Liability</li> </ul>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability insurance will cover off-site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect during the Works phase until twelve (12) months following the earlier of the termination of the insured's person's involvement in the Works and Substantial</p>	

**Confidential**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
HMQ's and Contractor's Protective extensions	<ul style="list-style-type: none"> <li>• <b>[\$[REDACTED]]</b> Prairie or Forest Fire Fighting Expenses</li> </ul> <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works):</p> <ul style="list-style-type: none"> <li>• HMQ's and Contractor's Protective</li> <li>• Blanket Contractual (written)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Non-Owned Automobile Liability</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles' (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>		Completion Date.  Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, MTO, MOI and the Lenders.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	Permitted Exclusions:			
	<ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• HMQ and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li> </ul>			
<b>Aircraft and Watercraft Liability (If any exposure)</b>	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft  Minimum \$[REDACTED] inclusive – Non-Owned Aircraft  Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, MTO, MOI and the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> <li>• HMQ, MTO, MOI and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li> </ul>			
<b>“All Risks” Ocean Marine Cargo</b>	[REDACTED]% Replacement Cost Valuation basis	\$[REDACTED]	Property of Every description destined for incorporation into the Project, during marine transit, on a full replacement value basis, with no co-insurance provision.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>(If any exposure)</b>			This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ or the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes Project Co, Lenders, Lenders' Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants and HMQ, as their respective interests may appear.</li> </ul>			
<p><b>“All Risks” Contractors’ Equipment</b></p> <p>To cover Project Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants</p>	<p>If Site equipment is three years old or less the sum insured shall be equal to <b>[REDACTED]</b>% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.</p>		<p>“All Risks” coverage on all owned, rented, leased or borrowed contractors’ equipment used at the Project Site.</p>	
<i>Comments</i>	<ul style="list-style-type: none"> <li>Waiver of subrogation rights against Project Co, HMQ, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders' Agent as well as officers, directors, shareholders and employees of the foregoing</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Comprehensive Crime</b>	\$[REDACTED] per loss with respect to Employee Dishonesty		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried by HMQ or the Lenders.</p>	
<b>Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co)</b>	Principal underwriters in compliance with Clause 14 of this Schedule 25.			



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Project, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

APPENDIX B TO SCHEDULE 25  
PERFORMANCE BOND

**THIS BOND IS SUBJECT TO THE TERMS AND CONDITIONS OF  
THE MULTIPLE OBLIGEE RIDER ATTACHED HERETO**

No. \_\_\_\_\_

Bond Amount \$[REDACTED]

**AIRLINX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.,** as Principal, hereinafter called the Principal, and **THE GUARANTEE COMPANY OF NORTH AMERICA,** as Surety, duly authorized to transact the business of suretyship in Canada, **CHUBB INSURANCE COMPANY OF CANADA,** as Surety, duly authorized to transact the business of suretyship in Canada, **TRAVELERS GUARANTEE COMPANY OF CANADA,** as Surety, duly authorized to transact the business of suretyship in Canada, and **ZURICH INSURANCE COMPANY LTD,** as Surety, duly authorized to transact the business of suretyship in Canada hereinafter collectively called the Surety, are held and firmly bound unto **AIRLINX TRANSIT PARTNERS INC.** as Obligee, hereinafter called the Obligee, in the amount of [REDACTED] (\$[REDACTED] ), of lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

**WHEREAS,** the Principal has entered into a written contract entitled Design and Construction Contract with **AIRLINX TRANSIT PARTNERS INC.** dated **December 15<sup>th</sup>, 2011** for The Airport Rail Link Spur Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Design and Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Design and Construction Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform its obligations to the Obligee under the Design and Construction Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations to the Obligee under the Design and Construction Contract (a “**Contractor Event of Default**”), the Obligee having performed the Obligee’s obligations under the Design and Construction Contract, the Surety shall promptly select and carry out one of the four following options:

1. remedy any default, or;
2. complete the Design and Construction Contract in accordance with its terms and conditions, or;

3. obtain a bid or bids for submission to the Obligees for completing the Design and Construction Contract in accordance with its terms and conditions and upon determination by the Obligees and the Surety of the lowest responsible bidder, acceptable to Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, acting reasonably, arrange for a contract between such bidder and the Obligees or between such bidder and such other party as an Additional Named Obligees shall be entitled to direct, and the Surety shall make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Design and Construction Contract, less the Balance of the Design and Construction Contract Price and to pay all expenses incurred by the Obligees as a result of the Principal's default relating directly to the performance of the Construction Work under the Design and Construction Contract, but not exceeding the Bond Amount. The Balance of the Design and Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Design and Construction Contract, less the amount properly paid by the Obligees to the Principal under the Design and Construction Contract; or
4. pay the Obligees the lesser of (1) the Bond Amount or (2) the Obligees's proposed cost to complete the Design and Construction Contract in accordance with its terms and conditions less the Balance of the Design and Construction Contract Price.

The Surety shall not be discharged or released from liability hereunder and such liability shall not be in any way affected by any changes, alterations, additions or variations, taking or receiving of security between the Principal and the Obligees, or extension of time, or other modification of the Design and Construction Contract, by the exercise by the Obligees of any of the rights or powers reserved to it under the Design and Construction 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 Design and Construction Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Obligees.

The Surety agrees that for the purposes of determining its liability under this Bond, findings or decisions against the Principal under the terms of the Design and Construction Contract, that are binding on the Principal and the Obligees shall also bind the Surety.

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the Substantial Completion Date, or (2) the date on which the Principal is declared in default by the Obligees and such notice of default is provided to

National Bank Financial Inc. and Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16.

The Surety shall, in no event, be liable for a greater sum than the Bond Amount. Further, and notwithstanding anything else in this Bond, the Surety's liability hereunder for any default under Section 34.1(a)(xi) of the Project Agreement shall be limited to any default by the Principal resulting in the non-performance or non-observance by the Principal of any of its other obligations under the Design and Construction Contract.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligee named herein, or the heirs, executors, administrators, successors or assigns of the Obligee.

**IN WITNESS WHEREOF**, the Principal and the Surety have signed and sealed this Bond dated the 15<sup>th</sup> day of December 2011.

**SIGNED, SEALED AND DELIVERED**

in the presence of:

**AIRLINX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC. BY:**

**AECON CONSTRUCTION AND MATERIALS LIMITED**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**THE GUARANTEE COMPANY OF NORTH AMERICA**

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

\_\_\_\_\_  
Name of person signing

**CHUBB INSURANCE COMPANY OF CANADA**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**TRAVELERS GUARANTEE COMPANY OF  
CANADA**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**ZURICH INSURANCE COMPANY LTD**

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

\_\_\_\_\_  
Name of person signing

EXHIBIT 1 TO APPENDIX B

**FORM OF MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND**

No. \_\_\_\_\_

**TO BE ATTACHED TO AND FORM PART OF THE PERFORMANCE BOND NO.** \_\_\_\_\_ dated the 15<sup>th</sup> day of December 2011 (the “Bond”) concurrently with the execution of this Multiple Obligee Rider, issued by **THE GUARANTEE COMPANY OF NORTH AMERICA**, as Surety, duly authorized to transact the business of suretyship in Canada, **CHUBB INSURANCE COMPANY OF CANADA**, as Surety, duly authorized to transact the business of suretyship in Canada, **TRAVELERS GUARANTEE COMPANY OF CANADA**, as Surety, duly authorized to transact the business of suretyship in Canada, and **ZURICH INSURANCE COMPANY LTD**, as Surety, duly authorized to transact the business of suretyship in Canada, as Surety (hereinafter collectively called the “**Surety**”), on behalf of **AIRLIX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**, as Principal (hereinafter called the “**Principal**”), and in favour of **AIRLIX TRANSIT PARTNERS INC.**, as Obligee (hereinafter called the “**Obligee**”).

**NOW THEREFORE**, in consideration of Ten (\$10.00) 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 National Bank Financial Inc. and Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, in their respective capacities as assignees of the Design and Construction Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee(s)**”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.
2. Capitalized terms used in this Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the Bond and the Design and Construction Contract.
3. If there is an event of default by Construction Contractor under the Design and Construction Contract (a “**Construction Event of Default**”) and National Bank Financial Inc. or Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the

*Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, makes a claim under the Bond, National Bank Financial Inc. or Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, as the case may be, shall make available to the Surety in accordance with the terms of the Design and Construction Contract the Balance of the Design and Construction Contract Price.

4. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
5. No alteration or material change in the Design and Construction Contract or any conduct of the Principal, Obligee or National Bank Financial Inc., prior to the Principal being declared in default, shall prejudice the rights or interest of Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, under the Bond or this Multiple Obligee Rider provided that Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, has not caused such alteration or material change without the prior written consent of the Surety.
6. The Obligee, Principal, Surety and National Bank Financial Inc. 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 Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, acting reasonably, and the Surety shall provide reasonable notice to Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 prior to remedying any default, settling, waiving, reducing or otherwise compromising any claim or making



any payment under the Bond, provided that the Surety shall not be precluded from tendering upon the Obligee(s) performance pursuant to one of the four numbered options in the Bond.

7. The Surety acknowledges the process in the Lenders' Direct Agreement for making a claim against the Bond, including, but not limited to, the Lenders' Step In Period rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from the Surety's rights under the Bond or this Multiple Obligee Rider.
8. 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.
9. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.

**IN WITNESS WHEREOF**, the Principal, Surety, Obligee, Owner and the Lenders' Agent have signed and sealed this Multiple Obligee Rider dated the 15<sup>th</sup> day of December 2011.

**SIGNED, SEALED and DELIVERED**

in the presence of:

**AIRLINX TRANSIT PARTNERS JV, AN  
UNINCORPORATED JOINT VENTURE  
BETWEEN AECON CONSTRUCTION AND  
MATERIALS LIMITED AND DUFFERIN  
CONSTRUCTION COMPANY, A DIVISION OF  
HOLCIM (CANADA) INC. BY:**

**AECON CONSTRUCTION AND MATERIALS  
LIMITED**

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

\_\_\_\_\_  
Name of person signing

**DUFFERIN CONSTRUCTION COMPANY, A  
DIVISION OF HOLCIM (CANADA) INC.**

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

Name of person signing

**THE GUARANTEE COMPANY OF NORTH AMERICA**

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

Name of person signing

**CHUBB INSURANCE COMPANY OF CANADA**

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

Name of person signing

**TRAVELERS GUARANTEE COMPANY OF CANADA**

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

Name of person signing

**ZURICH INSURANCE COMPANY LTD**

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

Name of person signing

**AIRLIX TRANSIT PARTNERS INC.**

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

Name of person signing

**NATIONAL BANK FINANCIAL INC.**

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

\_\_\_\_\_  
Name of person signing

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

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

\_\_\_\_\_  
Name of person signing

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

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

\_\_\_\_\_  
Name of person signing

APPENDIX C TO SCHEDULE 25

**FORM OF LABOUR AND MATERIAL PAYMENT BOND**

**NOTE:** This Bond is issued simultaneously with a Performance Bond and Multiple Oblige Rider and is subject to the terms and conditions of the Labour and Material Payment Bond Multiple Oblige Rider attached hereto

**Bond No.** \_\_\_\_\_

**Bond Amount:** §[REDACTED]

**AIRLINX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.** as Principal (hereinafter called the “**Principal**”), and **THE GUARANTEE COMPANY OF NORTH AMERICA** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, **CHUBB INSURANCE COMPANY OF CANADA** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, **TRAVELERS GUARANTEE COMPANY OF CANADA** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, and **ZURICH INSURANCE COMPANY LTD** a corporation created and existing under the laws of Switzerland and duly authorized to transact the business of Suretyship in Canada as Surety, (hereinafter collectively called the “**Surety**”) are subject to the conditions hereinafter contained, held and firmly bound unto **AIRLINX TRANSIT PARTNERS INC.**, as Trustee (hereinafter called the “**Obligee**”), for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of **[REDACTED]** (**§[REDACTED]**) of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a written contract entitled Design and Construction Contract with **AIRLINX TRANSIT PARTNERS INC.** dated **December 15<sup>th</sup>, 2011** for The Airport Rail Link Spur Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Design and Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Design and Construction Contract.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Design and Construction Contract, then this obligation shall be null and void; and otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the

performance of the Design and Construction Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Design and Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Design and Construction Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Design and Construction Contract. 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.

2. The Principal and the Surety hereby jointly and severally agree with the Oblige, as Trustee, that every Claimant who has not been paid as provided for under the terms of his or her contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant’s work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of his or her contract with the Principal and have execution thereon. Provided that the Oblige is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Oblige or by joining the Oblige as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants or any of them, who take such act, action or proceeding shall indemnify and save harmless the Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Oblige to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
  - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Oblige, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in

the Province of Ontario or other part of Canada in which the subject matter of the Design and Construction Contract is located. Such notice shall be given:

- (i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the construction lien legislation applicable to the Claimant's contract with the Principal, whichever is greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;
  - (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
- (b) after the expiration of one (1) year following the date on which the Principal ceased work on the Construction Contract, including work performed under the guarantees provided in the Design and Construction Contract;
  - (c) other than in a Court of competent jurisdiction in the Province or District of Canada in which the subject matter of the Design and Construction Contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 1959 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
5. Any material change in the Design and Construction Contract between the Principal and the Obligeé 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.
6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of construction liens which may be filed of record against the subject matter of the Design and Construction Contract, whether or not claim for the amount of such lien be presented under and against this Bond.
7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this 15<sup>th</sup> day of December 2011.

**SIGNED, SEALED AND DELIVERED** in the presence of:

**AIRLIX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC. BY:**

**AECON CONSTRUCTION AND MATERIALS LIMITED**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

**THE GUARANTEE COMPANY OF NORTH AMERICA**

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

\_\_\_\_\_  
Name of person signing

**CHUBB INSURANCE COMPANY OF CANADA**

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

\_\_\_\_\_  
Name of person signing

**TRAVELERS GUARANTEE COMPANY OF  
CANADA**

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

\_\_\_\_\_  
Name of person signing

**ZURICH INSURANCE COMPANY LTD**

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

\_\_\_\_\_  
Name of person signing



EXHIBIT 1 TO APPENDIX C

LABOUR AND MATERIAL PAYMENT BOND

MULTIPLE OBLIGEE RIDER

No. \_\_\_\_\_

**TO BE ATTACHED TO AND FORM PART OF THE LABOUR AND MATERIAL PAYMENT BOND NO. \_\_\_\_\_** dated the 15th day of December, 2011 (the “**L&M Bond**”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligee Rider (“**L&M Multiple Obligee Rider**”) issued by **THE GUARANTEE COMPANY OF NORTH AMERICA**, as Surety, duly authorized to transact the business of suretyship in Canada, **CHUBB INSURANCE COMPANY OF CANADA**, as Surety, duly authorized to transact the business of suretyship in Canada, **TRAVELERS GUARANTEE COMPANY OF CANADA**, as Surety, duly authorized to transact the business of suretyship in Canada, and **ZURICH INSURANCE COMPANY LTD**, as Surety, duly authorized to transact the business of suretyship in Canada, as Surety (hereinafter collectively called the “**Surety**”), on behalf of **AIRLIX TRANSIT PARTNERS JV, AN UNINCORPORATED JOINT VENTURE BETWEEN AECON CONSTRUCTION AND MATERIALS LIMITED AND DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF HOLCIM (CANADA) INC.**, as Principal (hereinafter called the “**Principal**”), and in favour of **AIRLIX TRANSIT PARTNERS INC.**, as Obligee (hereinafter called the “**Obligee**”).

**NOW THEREFORE**, in consideration of Ten (\$10.00) 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 L&M Bond shall and is hereby amended to add Her Majesty The Queen In Right Of Ontario as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (hereinafter called the “**Owner**”) and National Bank Financial Inc. (hereinafter called the “**Lenders’ Agent**”) as additional named Obligees, in their respective capacities as assignees of the Design and Construction Contract.
2. Capitalized terms used in this L&M Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the L&M Bond and the Design and Construction Contract.
3. All of the terms, conditions and provisions of the L&M Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Design and Construction Contract or any conduct of the Principal, Obligee or the Lenders’ Agent, shall prejudice the rights or interest of

Owner or Claimant under the L&M Bond or this L&M Multiple Obligee Rider provided that Owner or Claimant have not caused such alteration or material change without the prior written consent of the Surety.

5. In the event of any ambiguity, conflict or inconsistency, the L&M Bond and the L&M Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
6. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the L&M Bond.

**IN WITNESS WHEREOF**, the Principal, Surety, Obligee, Owner and the Lenders' Agent have signed and sealed this L&M Multiple Obligee Rider dated the 15<sup>th</sup> day of December 2011.

**SIGNED, SEALED and DELIVERED**  
in the presence of :

**AIRLINX TRANSIT PARTNERS JV,  
AN UNINCORPORATED JOINT  
VENTURE BETWEEN AECON  
CONSTRUCTION AND MATERIALS  
LIMITED AND DUFFERIN  
CONSTRUCTION COMPANY, A  
DIVISION OF HOLCIM (CANADA)  
INC.**

**AECON CONSTRUCTION AND  
MATERIALS LIMITED**

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Name of person signing

**DUFFERIN CONSTRUCTION COMPANY, A  
DIVISION OF HOLCIM (CANADA) INC.**

By:

\_\_\_\_\_  
*Signature*

---

Name of person signing

**THE GUARANTEE COMPANY OF  
NORTH AMERICA**

By:

---

*Signature*

---

Name of person signing

**CHUBB INSURANCE COMPANY OF CANADA**

By:

---

*Signature*

---

Name of person signing

**TRAVELERS GUARANTEE COMPANY OF CANADA**

By:

---

*Signature*

---

Name of person signing

**ZURICH INSURANCE COMPANY LTD**

By:

---

*Signature*

---

Name of person signing

**AIRLINX TRANSIT PARTNERS INC.**

By:

---

*Signature*

---

Name of person signing

**NATIONAL BANK FINANCIAL INC.**

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Name of person signing

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

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Name of person signing

**HER MAJESTY THE QUEEN  
IN RIGHT OF ONTARIO as represented  
by Metrolinx**

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 of this Schedule 26, as follows:
- (a) in accordance with this Section 1;
  - (b) in accordance with the Output Specifications;
  - (c) in accordance with the requirements of Good Industry Practice;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 26 of the Project Agreement; and
  - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As-Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to HMQ, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement HMQ and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.
- 1.5 Records may, with the consent of HMQ, not to be unreasonably withheld or delayed, be stored in electronic form if HMQ has access thereto and will continue to have access

- thereto, such that HMQ will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify HMQ if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, HMQ may elect to require Project Co to deliver such records to HMQ, in which case Project Co shall, at the expense of HMQ, deliver such records (with the exception of Sensitive Information) to HMQ in the manner and to the location as HMQ shall specify; or
  - (b) if HMQ fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of a 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 HMQ in the manner and to the location that HMQ shall reasonably specify. HMQ shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
  - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of a HMQ Event of Default or pursuant to Section 36.3 of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by HMQ; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Final Completion Date or the Termination Date, as applicable (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to HMQ a report, as reasonably requested by HMQ in connection with HMQ's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all

liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against HMQ or that may be owing by HMQ to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.

- 1.11 Project Co shall provide to HMQ not later than 120 days after the end of each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's unaudited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP.

## **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) the Contract Documents, including all amendments to such agreements;
  - (b) all records relating to the appointment and replacement of the HMQ Representative and the Project Co Representative;
  - (c) any documents, drawings (including, without limitation, the As-Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
  - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
  - (e) all records relating to any statutory inspections of the ARL Spur Line, ARL T1 Station or the Site, including any roadways;
  - (f) any notices, reports, results and certificates relating to Substantial Completion and 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, Relief Events and Excusing Causes;
  - (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) 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;
  - (m) the financial accounts of Project Co referred to in Section 1.11 above;
  - (n) such documents as HMQ may reasonably require relating to Business Opportunities in which HMQ has a right or interest;
  - (o) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
  - (p) any documents relating to insurance and insurance claims;
  - (q) all Jointly Developed Materials; and
  - (r) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this 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 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
  - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the HMQ Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the HMQ Representative, if given by HMQ, or by the Project Co Representative, if given by Project Co.
- 1.4 In the event of a Dispute in respect of any Critical Item set out in Section 12 of this Schedule 27, the provisions of that Section 12 shall solely govern the resolution of such Dispute and, except as set forth in Section 12.3 of this Schedule 27, the provisions of Sections 1.2 and 2 to 9 of this Schedule 27 shall not apply.

#### 2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the HMQ Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information

and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

**3. Amicable Resolution by Senior Officers of each Party**

3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:

- (a) is in a position of authority above that of the HMQ Representative or the Project Co Representative, as the case may be; and
- (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.

3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

**4. Independent Certifier**

4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.

4.2 All Disputes related to the Works and that:

- (a) arise prior to, or otherwise in relation to, Substantial Completion;
- (b) relate to completion of Minor Deficiencies;
- (c) relate to whether any proposed work constitutes a Variation;
- (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 29 of the Project Agreement;
- (e) are referred to in this Project Agreement for determination by the Independent Certifier; or
- (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier’s decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier’s determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier’s decisions shall be resolved pursuant to this Schedule 27, provided however that Section 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

**5. [Intentionally Deleted]**

**6. Adjudication**

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Sections 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Section 4.2 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Section 4.4 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the “**Adjudicator**”).
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario) and shall:
- (a) be independent of and at arm’s length to Project Co, HMQ, any Government Entity, the Lenders and any other person having an interest in the ARL Spur Line and ARL T1 Station or any of the Contract Documents;
  - (b) if the Dispute arises during the life of the Project Agreement, be familiar with operations and management and the activities of a project similar to the ARL Spur Line and ARL T1 Station; and

- (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure: Fourth Edition* (the "***Model Adjudication Procedure***") the terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the *Model Adjudication Procedure*, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the ARL Spur Line and ARL T1 Station is operating in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
- (b) notwithstanding paragraphs 16 and 24 of the *Model Adjudication Procedure*, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event and/or Compensation Event. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final;
- (c) notwithstanding paragraphs 29 and 30 of the *Model Adjudication Procedure*, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act, 1991* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than as set out in Section 6.2) or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the *Model Adjudication Procedure*, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion,

certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding 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 this Schedule 27;

- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the *Model Adjudication Procedure*, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by HMQ unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, HMQ may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that HMQ undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to HMQ's right to contest the determination made by the Adjudicator in a subsequent proceeding. HMQ shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

## **7. Referral of Disputes to Arbitration or Litigation**

7.1 If:

- (a) the amount awarded the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year;
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11 of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

7.2 If a Party is entitled to refer a Dispute to which Section 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, the Adjudicator shall not be called as a witness by either party in any arbitration or litigation proceeding.

**8. Resolution by Arbitration**

8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied,

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
  - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
  - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
  - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

- 8.4 If the arbitration tribunal is comprised of three arbitrators:
- (a) the arbitrators shall be appointed as follows:
    - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
    - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
    - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
    - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
  - (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.
- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Works or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;



- (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
  - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
  - (f) inspect the Works, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
  - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
  - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.

- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

## **9. Litigation**

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:
- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
  - (b) if the Dispute is considered by HMQ to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator or Independent Certifier, as applicable, that is to be the subject of the litigation.

- 9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:
- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and
  - (b) [Intentionally Deleted].
- 9.3 Nothing in this Schedule 27 affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

## **10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation**

- 10.1 For all Disputes that arise prior to Substantial Completion, unless:
- (a) both Parties otherwise agree; or
  - (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
  - (c) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or
  - (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
  - (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

## **11. Consolidation with Third Party Disputes**

- 11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project**

**Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if HMQ, Project Co and the other Parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.

11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other Parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and

- (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

## **12. Critical Items**

12.1 In the event that a Dispute relates to one or more of the following elements, features or aspects of the Project (the "**Critical Items**"):

- (a) [Not Applicable].

the effect of which is likely to materially impede the proper and timely completion of the Works, such Dispute shall be resolved in accordance with Section 12.2 of this Schedule 27.

12.2 Any Dispute with respect to any Critical Item shall be resolved in an expeditious manner and shall not be subject to the Dispute Resolution Procedure set forth in this Schedule 27 and must be resolved to the satisfaction of HMQ and Project Co within two hours of being reported by Project Co or otherwise identified by HMQ. For the purposes of this Section 12, "resolved" means a proposed solution must be agreed between the HMQ Representative and Project Co within that two hour period, including a time frame for implementing a proposed solution. For greater certainty, it is understood that in some cases the nature or extent of a Critical Item may not permit that Critical Item to be solved or otherwise resolved within two hours.

12.3 In the event that:

- (a) there is a Dispute related to a Critical Item that cannot be resolved within the two hours set forth in Section 12.2 of this Schedule 27,
  - (i) as to the existence of a problem or its extent, or
  - (ii) with respect to the proposed solution, or
- (b) there is a Dispute concerning the effectiveness of any solution proposed in respect of a Critical Item

then that Dispute must be resolved by an Adjudicator in accordance with Section 6 of this Schedule 27 within one Business Day of such Adjudicator being asked to undertake such an adjudication. Decisions of the Adjudicator with respect to Disputes relating to Critical Items are final and binding with respect to the action being taken, but not with respect to fault or the cost or timing implications of the matter in dispute. Decisions of the Adjudicator with respect to fault or the cost or timing implications shall be treated as a Dispute and determined in accordance with the provisions of this Schedule 27.

**13. Miscellaneous**

- 13.1 Project Co and HMQ shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of HMQ, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with HMQ's position shall: (i) subject to and in accordance with Section 30 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 31 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to HMQ, Project Co shall indemnify HMQ as provided for at Section 44.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to HMQ until the date of payment; or
  - (b) for amounts payable by HMQ to Project Co, HMQ shall indemnify Project Co as provided for at Section 44.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to HMQ or, as applicable, any underpayment or non-payment by HMQ from the date of any overpayment to HMQ or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or a court of competent

jurisdiction, are made available in a timely manner to HMQ and the HMQ Representative.

- 13.5 HMQ shall ensure that any and all documents and other information in the possession or control of any HMQ Party that are available to HMQ and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;
  - (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;
  - (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27;
  - (d) [Intentionally Deleted]; and
  - (e) agree to resolve a Dispute relating to Critical Items by adjudication, arbitration or litigation notwithstanding the requirements of Section 12 of this Schedule 27.

TOR01: 4540833: v14

SCHEDULE 28

STANDBY LETTER OF CREDIT

[NTD: The Standby Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank’s counters in Toronto, Ontario.]

Letter of Credit: #[•]

Date: [•]

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

Attn: •

Dear Sir/Madam:

**RE: ARL Spur Project**

---

At the request of our client, AirLINX Transit Partners Inc. (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED] Dollars (\$[REDACTED]).

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation (“**HMQ**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 2.4(a) of a project agreement dated on or about December 15, 2011 (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the **Financial Close Target Date**] (the “**Expiry Date**”), and HMQ may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.



We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[•].

It is understood that **[insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “**UCP**”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

**[Name of Issuing Bank]**

By: \_\_\_\_\_  
Name:  
Title:

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

TOR01: 4540844: v15

SCHEDULE 29

WARRANTY LETTER OF CREDIT

[NTD: The Warranty Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

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

Attn: ●

Dear Sir/Madam:

**RE: ARL Spur Project**

---

At the request of our client, AirLINX Transit Partners (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED] Dollars (\$[REDACTED]).

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation (“**HMQ**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 11.31 of a project agreement dated on or about December 15, 2011 (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 date that is 90 days after expected end of **Warranty Period**] (the “**Expiry Date**”), and HMQ may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

---

**Confidential**

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Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[•].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

**[Name of Issuing Bank]**

By: \_\_\_\_\_  
Name:  
Title:

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

TOR01: 4584079: v15

**SCHEDULE 30  
INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 15<sup>th</sup> day of December, 2011

**AMONG:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented, jointly and severally, by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32 and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 (“**HMQ**”)

**AND:**

**NATIONAL BANK FINANCIAL INC.**, acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

**AND:**

**AIRLIX TRANSIT PARTNERS INC.**, a corporation incorporated under the laws of Ontario

(“**Project Co**”)

**AND:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company incorporated under the laws of Canada

(the “**Account Trustee**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. HMQ, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. HMQ, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

- D. HMQ, 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 on the first page of this Insurance Trust Agreement.
- (b) **“Appointed Representative”** has the meaning given in the Lenders' Direct Agreement.
- (c) **“ARL Spur Line”** has the meaning given in the Project Agreement.
- (d) **“ARL T1 Station”** has the meaning given in the Project Agreement.
- (e) **“Bank”** means [REDACTED].
- (f) **“Bonds”** has the meaning given in the Project Agreement.
- (g) **“Business Day”** has the meaning given in the Project Agreement.
- (h) **“Change of Authorization Event”** has the meaning given in Section 8(a)(ii) of this Insurance Trust Agreement.
- (i) **“Change of Authorization Notice”** has the meaning given in Section 8(b)(ii) of this Insurance Trust Agreement.
- (j) **“Default Notice”** means a written notice given by the Lenders' Agent to the Account Trustee and HMQ that an event of default under the Lending Agreements has occurred and is continuing.
- (k) **“Default Period”** means the period commencing on the date upon which the Account Trustee and HMQ receives a Default Notice and ending on the date upon which the Account Trustee and HMQ 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.
- (l) **“Governmental Authority”** has the meaning given in the Project Agreement.

- (m) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance Trust Agreement.
- (n) “**Insurance Proceeds**” has the meaning given in Section 6(a) of this Insurance Trust Agreement.
- (o) “**Insurance Trust Account**” means [REDACTED] at [REDACTED].
- (p) “**Insurance Trust Agreement**” means this Insurance Trust Agreement.
- (q) “**HMQ**” has the meaning given in the Project Agreement.
- (r) “**Lenders**” has the meaning given in the Project Agreement.
- (s) “**Lenders’ Agent**” has the meaning given on the first page of this Insurance Trust Agreement.
- (t) “**Lenders’ Direct Agreement**” means the Lenders’ Direct Agreement made on or about the date hereof between HMQ, Project Co and the Lenders’ Agent.
- (u) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (v) “**Multiple Obligee Rider(s)**” means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, HMQ and the Lenders’ Agent are multiple obligees under the Bonds.
- (w) “**Multiple Obligees**” means, collectively, Project Co, HMQ and the Lenders Agent.
- (x) “**Notice Period**” has the meaning given in the Lenders’ Direct Agreement.
- (y) “**Order**” has the meaning given in Section 7(k) of this Insurance Trust Agreement.
- (z) “**Party**” means any of HMQ, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of HMQ, Project Co, the Lenders’ Agent and the Account Trustee.
- (aa) “**person**” has the meaning given in the Project Agreement.
- (bb) “**Project**” has the meaning given in the Project Agreement.
- (cc) “**Project Agreement**” means the project agreement made on or about the date hereof between HMQ and Project Co.
- (dd) “**Project Co**” has the meaning given on the first page of this Insurance Agreement.

- (ee) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (ff) **“Replacement Project Agreement”** has the meaning given in the Lenders’ Direct Agreement.
- (gg) **“Replacement Project Co”** has the meaning given in the Lenders’ Direct Agreement.
- (hh) **“Step-In Notice”** has the meaning given in the Lenders’ Direct Agreement.
- (ii) **“Step-In Period”** has the meaning given in the Lenders’ Direct Agreement.
- (jj) **“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, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or

document as amended, supplemented, restated, substituted, replaced, novated or assigned.

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



**3. BONDS AND INSURANCE TRUST ACCOUNT**

- (a) Prior to the commencement of a Default Period, the 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, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders' Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the 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 HMQ.
- (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, HMQ, 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 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 ARL Spur Line and ARL T1 Station 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 HMQ loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co 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 HMQ is entitled to indemnification under the Insurance Policies in respect of any loss incurred by HMQ, such related insurance proceeds are to be paid directly to HMQ by the Insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that HMQ shall be required to use such proceeds for

carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

#### **4. 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 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.

#### **4A BONDS**

- (a) If the Account Trustee and HMQ have received a Default Notice, and if the Lenders’ Agent presents to the Account Trustee (and the other parties to this Insurance Trust Agreement) a declaration that it or any person the 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 HMQ confirming the Lenders Agent’s right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to the 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 the Lenders’ Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and HMQ 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 HMQ or such designated party, without the need for further investigation or inquiry by the Account Trustee that HMQ or the designated party presenting the declaration is entitled to receive the original copy of the Bonds.
- (b) Project Co agrees to obtain or cause to be obtained from the Sureties 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) HMQ, the Lenders’ Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lenders’ Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of the Lenders’ Direct Agreement and this Insurance Trust Agreement, the provisions of the Lenders’ Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

## 5. 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 HMQ (the “**Insurance Proceeds**”) as follows:
- (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
  - (ii) in the case of any property builders' risk “All Risk” insurance, boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
    - (A) if the Account Trustee has not received a Default Notice and:
      - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
      - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than \$[REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
    - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as HMQ may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
  - (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 HMQ, 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 5(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, HMQ, may at any time or from time to time direct in writing.
- (c) Each of Project Co, the Lenders' Agent and HMQ 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, HMQ or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

## **6. ACCOUNT AGREEMENT**

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to HMQ all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as HMQ may from time to time request in writing.

## **7. THE ACCOUNT TRUSTEE**

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, HMQ or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this

Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, HMQ or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).

- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, HMQ, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 7(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 HMQ 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 7(b).
- (f) Except as otherwise provided in Sections 7(c), 7(d) and 7(e):
  - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).

- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or HMQ for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, HMQ and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, HMQ, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, HMQ, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or

uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, HMQ, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by HMQ shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from HMQ.
- (o) Each of the Lenders' Agent and HMQ shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or HMQ which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to this Section 7(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to Section 7(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and HMQ, or any shorter period of time as agreed to by Project Co and HMQ,



notwithstanding the provisions of Section 7(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.

## 8. LENDER'S AGENT AND HMQ 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 original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and HMQ shall thenceforth be entitled, to direct the Account Trustee with respect to the original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and HMQ shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that HMQ shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

## 9. TERMINATION

- (a) Subject to the provisions of Section 9(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:

- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
  - (ii) the obligations of Project Co to HMQ have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon 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, HMQ, and Project Co have entered into a replacement Insurance Trust Agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and HMQ.

## **10. 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, HMQ and Project Co.

## **11. NOTICES**

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

If to HMQ:

Metrolinx  
20 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5J 2W3

Fax: [REDACTED]  
Attn: [REDACTED]

with a copy to:

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

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Lenders' Agent: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

with a copy to :

[REDACTED]

Fax : [REDACTED]

Attn : [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;

- (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
- (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

## **12. AMENDMENTS**

This 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.

## **13. 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.

## **14. FORCE MAJEURE**

No party shall be liable to any other party, or held in breach of this Insurance Trust Agreement, if prevented, hindered, or delayed in the performance or observance of any

provision contained herein by reason of acts of God, riots, terrorism, acts of war, epidemics, earthquakes, or any other similar causes beyond the affected party's reasonable control and where such failure in performance is not caused directly or indirectly by the affected party (including but not limited to, mechanical, electronic or communication interruptions, disruptions or failures, unless caused by the negligent or willful misconduct of the affected party). Performance times under this Insurance Trust Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section, provided that the affected party shall take commercially reasonable steps to mitigate or remedy the event giving rise to the delay.

**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. 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.

## **21. 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.

## **22. COUNTERPARTS**

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

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

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

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

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I have authority to bind the corporation.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by Metrolinx**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]**

**NATIONAL BANK FINANCIAL INC.**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation

**[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]**



**AIRLINX TRANSIT PARTNERS INC.**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

**[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]**

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

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

Name: [REDACTED]

Title: [REDACTED]

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

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

**[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]**

TOR01: 4577923: v25

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**Confidential**

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**SCHEDULE 31**

**PROJECT CO INFORMATION**

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

1. Name: AirLINX Transit Partners Inc.

2. Date of Incorporation: November 7, 2011

3. Corporation Number: 2304861

4. Directors:

<b>Name</b>	<b>Address</b>
[REDACTED]	

5. Officers:

<b>Name</b>	<b>Address</b>	<b>Office</b>
[REDACTED]		

6. Subsidiaries: [REDACTED]

7. Authorized and issued share capital:

<b>Name and address of registered holder</b>	<b>Number and class of shares held</b>	<b>Amount paid up</b>
[REDACTED]		

8. Loans:

<b>Name and address of registered holder</b>	<b>Nominal value of loan</b>
[REDACTED]	

9. Other outstanding securities (including description of type of securities, name and address of holder and amount):

[REDACTED]

10. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co:

**[REDACTED]**

TOR01: 4540856: v14

**SCHEDULE 32**

**[INTENTIONALLY DELETED]**

TOR01: 4579092: v12

**SCHEDULE 33**

**TRANSFER OF METROLINX OBLIGATIONS TO THE GTAA ONTO PROJECT CO**

**[REDACTED]**