

**PROJECT AGREEMENT
(Redacted Version)**

**TO DESIGN, BUILD AND FINANCE
ADVANCE TUNNEL FOR THE EGLINTON
CROSSTOWN WEST EXTENSION**

CONFIDENTIAL

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Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Warranty Letter of Credit
Schedule 8	- Project Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Quality Management
Schedule 12	- Works Schedule Requirements
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program and Handover
Schedule 15	- Output Specifications
Schedule 16	- Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communication and Public Engagement Protocol
Schedule 19	- [Intentionally Deleted]
Schedule 20	- Lands
Schedule 21	- Liquidated Damages and Construction Enforcement Regime
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination
Schedule 24	- Intellectual Property
Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Refinancing
Schedule 29	- Form of Performance Guarantee of Construction Guarantors
Schedule 30	- Insurance Trust Agreement
Schedule 31	- Project Co Information
Schedule 32	- [REDACTED]
Schedule 33	- Works Report Requirements
Schedule 34	- Construction Safety
Schedule 35	- Incentive Payments
Schedule 36	- Mobility Matters
Schedule 37	- Geotechnical Baseline Reports
Schedule 38	- Payment Procedures

THIS PROJECT AGREEMENT is entered into as of the 20th day of May, 2021

BETWEEN:

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

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

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

AND:

WESTEND CONNECTORS DEVELOPER GENERAL PARTNERSHIP,
[REDACTED]

(“**Project Co**”)

WHEREAS:

- A. The Province of Ontario’s New Subway Transit Plan for the Greater Toronto and Hamilton Area includes a number of priority projects, including the Eglinton Crosstown West Extension, a 9.2 kilometre extension of the Eglinton Crosstown LRT from Mount Dennis Station to Renforth Station, with a possible connection to Pearson International Airport.
- B. In connection with the Eglinton Crosstown West Extension, Contracting Authority wishes to procure the design, construction and financing of an advance tunnel for the underground portion of the alignment between Scarlett Road and Renforth Gateway and for other associated structures required for the Eglinton Crosstown West Extension.
- C. Contracting Authority commenced the procurement process for the Project, as hereinafter defined, by issuance of a Request for Qualifications for the Project on March 6, 2020.
- D. Project Co will carry out the Works, which Works include the design, construction, and financing of the New Metrolinx Infrastructure and the New Third Party Infrastructure (the “**Project**”).
- E. Contracting Authority and Project Co wish to enter into this project agreement (the “**Project Agreement**”) which sets out the terms and conditions upon which Project Co shall perform the Works.
- F. The Project will proceed as a public-private partnership project approved by MOI.
- G. As a result, the Project shall follow five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - 1. The public interest is paramount.

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

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

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

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Warranty Letter of Credit
Schedule 8	- Project Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Quality Management
Schedule 12	- Works Schedule Requirements
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program and Handover

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

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

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

1.2 Conflict of Terms

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

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

1.3 Conflict of Documents

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

1.4 Legal Requirements

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

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.14 to 4.20, 5 to 15, 16.5, 17 to 22, 26 to 31, and 41 to 54 and Schedules 1 (including Appendices A and B to Schedule 1 – Permits, Licences, Approvals and Agreements), 2, 7 – 13, 16 – 18, 20 – 22, 24 – 27, 32, 36, and 37 of this Project Agreement will come into effect on the date of this Project Agreement (“**Commercial Close**”). All other provisions and schedules will come into effect only on Financial Close.

2.2 Standby Letter of Credit

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

2.3 Financial Close

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

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

2.4 Disruption in Financial Markets

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

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

3. GUARANTEED PRICE

3.1 Guaranteed Price and Adjustments

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is \$729,181,720.26, and is equal to the sum of the Cost of the Works and the Cost of the Financing. The Cost of the Works and the Cost of the Financing are as set out in the Financial Model.
- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the two Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the Financial Submission Deadline.
- (c) The Parties:
- (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and
 - (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date set out in Section 3.1(b).
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure.
- (e) Project Co acknowledges and agrees that,

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

3.2 Cash Allowances

- (a) Project Co shall open the Cash Allowance Account and shall provide account details to Contracting Authority. Project Co shall deposit the Cash Allowance Amount into the Cash Allowance Account in monthly installments on the dates and in the amounts as set out in the Financial Model. Project Co shall deposit the first monthly installment of the Cash Allowance Amount into the Cash Allowance Account no later than one month prior to the Lease Commencement Date. Project Co shall manage the Cash Allowance Account in accordance with Section 3.2(b).
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
 - (i) Project Co will hold and manage all monies in the Cash Allowance Account in trust for, for the benefit of and as directed by Contracting Authority;
 - (ii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of Contracting Authority;
 - (iii) Project Co shall provide a reconciliation of the Cash Allowance Account to Contracting Authority on a monthly basis within the Works Report;
 - (iv) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 3.2(a), Contracting Authority shall make deposits into the Cash Allowance Account in the event that a monthly invoice that is approved by Contracting Authority in accordance with this Section 3.2 for the Cash Allowance Item exceeds the balance of the Cash Allowance Account following Project Co's deposit of the applicable monthly installment in accordance with the Financial Model;
 - (v) subject to Section 3.2(g), if, on the earlier of, (i) Lease Assignment Date, or (ii) the date on which the Contracting Authority Site Office Lease expires or terminates in accordance with its terms, there exists a positive balance in the Cash Allowance Account, such balance will be the property of Contracting Authority and will be paid by Project Co to Contracting Authority or as Contracting Authority directs; and
 - (vi) 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.

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- (c) On a monthly basis, Project Co shall provide to the Contracting Authority Representative a request for payment approval that contains the monthly invoices for the Cash Allowance Item, including evidence that the monthly invoices align with the monthly lease payments pursuant to the Contracting Authority Site Office Lease, and any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Contracting Authority Site Office Lease (a “**Request for Payment Approval**”).
- (d) Contracting Authority shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the monthly invoices set out in such Request for Payment Approval is approved. Contracting Authority shall only be permitted to withhold its approval if Contracting Authority determines that the Request for Payment Approval does not contain the information set out in Section 3.2(c), acting reasonably, to discharge its obligations under this Section 3.2. If Contracting Authority withholds its approval pursuant to this Section 3.2(d) and subsequently receives the information that Contracting Authority 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, Contracting Authority's approval for the invoices set out in the aforementioned Request for Payment Approval.
- (e) If Contracting Authority approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant parties or each Project Co Party for the Cash Allowance Item from the Cash Allowance Account.
- (f) Project Co acknowledges and agrees that:
- (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
 - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
 - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including 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 Project Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.
- (g) To the extent that Project Co's liabilities under the Contracting Authority Site Office Lease have not been fully assumed by Contracting Authority or a permitted assignee of the Contracting Authority Site Office Lease pursuant to Section 4.1.4.1 of Schedule 15 – Output Specifications, Project Co shall be permitted to retain any amounts that are reasonably expected to be payable pursuant to the Contracting Authority Site Office Lease. Prior to paying any such amounts, Project Co shall provide Notice to Contracting Authority that includes evidence that the amounts

have become due and payable under the Contracting Authority Site Office Lease. For clarity, such amounts shall be held in the Cash Allowance Account, and Sections 3.2(b)(i), 3.2(b)(ii), 3.2(b)(vi) and 3.2(f) shall apply to such amounts.

4. PAYMENT

4.1 General

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

4.2 Acknowledgement by Project Co

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

4.3 Lump Sum Payments

- (a) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the First Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (b) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Second Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (c) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Third Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (d) Subject to Sections 4.4(b) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST, less any Lane Closure Adjustment on the Substantial Completion Payment Date.
- (e) Each of the Parties shall comply with Schedule 35 – Incentive Payments.
- (f) Notwithstanding Section 4.3(d), if the Warranty Letter of Credit has not been delivered to Contracting Authority by the Substantial Completion Payment Date, Contracting Authority may withhold from the Substantial Completion Payment a holdback amount of \$[REDACTED] (the “**Warranty Cash Amount**”). In such an event, the Warranty Cash Amount may be withheld by Contracting Authority until,

- (i) if the Warranty Letter of Credit is delivered to Contracting Authority after the Substantial Completion Payment Date, the date that is five Business Days following the date that the Warranty Letter of Credit has been delivered to Contracting Authority; or
- (ii) if the Warranty Letter of Credit is not delivered to Contracting Authority after the Substantial Completion Payment Date, the Warranty Security Return Date,

and, upon the applicable day, the Warranty Cash Amount, less the amount of any claims previously satisfied by a draw in accordance with Section 11.20(b), shall be paid by Contracting Authority to Project Co.

- (g) Until receipt of the Warranty Letter of Credit, Contracting Authority may use the Warranty Cash Amount in the place of, in the same manner as and for the same purpose as the Warranty Letter of Credit. The withholding of the Warranty Cash Amount in accordance with Section 4.3(f) shall be Contracting Authority's sole remedy for failure on the part of Project Co to deliver the Warranty Letter of Credit by the Substantial Completion Payment Date and, for greater certainty, Contracting Authority shall not be entitled to withhold payment of the balance of the Substantial Completion Payment as a result of any such failure on the part of Project Co to deliver the Warranty Letter of Credit.

4.4 Directions on Payments

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

under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under section 7 of the *Construction Act* (Ontario) pursuant to section 10 of the *Construction Act* (Ontario).

4.5 Payment of Legislative Holdback

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

4.6 Payment of Finishing Holdback

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

4.7 Completion Holdback and Seasonal Works Holdback

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

4.8 Compensation on Termination

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

4.9 Payment Due under Insurance Policies

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

4.10 HST

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

4.11 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) Contracting Authority, to set-off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement (other than any Milestone Payments), any amounts (including any amounts payable in accordance with Section 46, or any amounts payable as liquidated damages pursuant to Schedule 21 – Liquidated Damages and Construction Enforcement Regime) that,
 - (A) are due or owed to Contracting Authority from or by Project Co pursuant to the terms of this Project Agreement or by any of the Construction Guarantors pursuant to the Performance Guarantee of Construction Guarantors; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (ii) Project Co to set-off against any amounts otherwise due to Contracting Authority pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 46) that,
 - (A) are due or owed to Project Co from or by Contracting Authority pursuant to the terms of this Project Agreement; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure.
- (b) Where a set-off, deduction or withholding is being exercised against amounts payable under a Proper Invoice, Contracting Authority shall deliver a notice of non-payment in the prescribed form and manner, no later than 14 days after receiving the Proper Invoice.
- (c) For clarity, Contracting Authority is entitled to exercise its rights in accordance with Section 4.11(a)(i) immediately upon an amount becoming due or owed to Contracting Authority,
- (i) by Project Co pursuant to the terms of this Project Agreement; or
 - (ii) by any of the Construction Guarantors pursuant to Schedule 29 – Form of Performance Guarantee of Construction Guarantors.

4.12 Effect of Payment

- (a) Subject to Section 40.2, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this

Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

4.13 No Other Entitlement

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

4.14 Taxes

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, Contracting Authority shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) Contracting Authority shall pay when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Metrolinx Lands, the New Metrolinx Infrastructure, the Existing Infrastructure and the New Third Party Infrastructure.
- (c) Contracting Authority shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Contracting Authority upon and in connection with payments by Contracting Authority to Project Co under this Project Agreement.

4.15 Changes in Scope of Taxation

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

4.16 Changes in Recoverability of Tax Credits

- (a) Contracting Authority will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to Contracting Authority from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 4.16, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in

the course of carrying out the Works to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

- (c) For the purposes of this Section 4.16, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

4.17 Information and Assistance Provided by Project Co

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

4.18 Residency – Income Tax Act (Canada)

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

4.19 Taxes – General

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

4.20 Taxes – Indemnity

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

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

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

5. SCOPE OF AGREEMENT

5.1 Scope of Agreement

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

6. REPRESENTATIONS AND WARRANTIES

6.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of Commercial Close:

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- (i) Project Co [REDACTED] has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) Project Co's [REDACTED];
 - (iii) [REDACTED] under the laws of Canada, is in good standing with Corporations Canada with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets and to carry on its business as it is currently being conducted and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of Project Co;
 - (iv) [REDACTED] under the laws of the Province of Ontario, is in good standing with the Ministry of Government and Consumer Services of Ontario with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets and to carry on its business as it is currently being conducted and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of Project Co;
 - (v) [REDACTED] under the laws of the Province of Ontario, is in good standing with the Ministry of Government and Consumer Services of Ontario with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets and to carry on its business as it is currently being conducted and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of Project Co;
 - (vi) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of infrastructure and facilities similar to those included in the scope of the Project in scale, scope, type and complexity, and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
 - (vii) Project Co has the requisite power, authority and capacity to execute, deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (viii) 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;
 - (ix) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization,

- fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (x) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
 - (xi) no Project Co Event of Default has occurred and is continuing;
 - (xii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
 - (xiii) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
 - (xiv) Project Co has reviewed the Background Information set out in Section 7 and conducted the investigations in respect of the Lands as set out in Section 16 and, without affecting anything in Section 7, Section 16 and Section 18, has conducted its own additional investigations (other than in respect of the Background Information and the Lands) and has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
 - (xv) Project Co is able to meet its obligations as they generally become due;
 - (xvi) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];

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- (xvii) **[Intentionally Deleted]**;
- (xviii) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xix) Project Co is not a Non-Resident;
- (xx) Project Co has obtained all necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Works;
- (xxi) the management or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xxii) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to Contracting Authority's approval, in the event of death, incapacity or resignation;
- (xxiii) Project Co and certain of the Project Co Parties have conducted inspections of the Lands (as set out in Section 16) and an investigation and examination of the Project Agreement, the Background Information (as set out in Section 7) and any other documents made available to Project Co by Contracting Authority so as to ascertain the nature or location of the Works, the protocols, rules and regulations if any applicable to the Works, possible delays in commencing the Works, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works;
- (xxiv) Project Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xxv) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project;
- (xxvi) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project; and
- (xxvii) either:
- (A) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
 - (B) the COR-Qualified Construction Project Co Party:
 - (I) is in possession of its OHSAS 18001 Accreditation or ISO 45001 Accreditation which remains in good standing and has the ability to

maintain such OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing at all times during the performance of the Works until such COR-Qualified Construction Project Co Party receives its COR Certification as required under this Project Agreement, and

- (II) has made an application to the IHSA for its COR Certification as required under this Project Agreement.

6.2 Contracting Authority Representations and Warranties

- (a) IO represents and warrants to Project Co, on a several basis, that as of Commercial Close:
 - (i) IO is a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, which provides all the requisite corporate power and authority for IO to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province;
 - (ii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), as applicable, IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for the Province that are required by this Project Agreement to be executed and delivered by IO;
 - (iii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), IO has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (iv) subject to Sections 6.2(a)(v)(C), (D) and (E), IO has obtained all of the necessary approvals to enter into and perform its obligations under this Project Agreement;
 - (v) this Project Agreement has been duly authorized, executed, and delivered by IO and constitutes a legal, valid, and binding obligation of IO, enforceable against IO in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;

- (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
 - (D) section 11.3 of the *Financial Administration Act* (Ontario);
 - (E) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of section 28 of the *Financial Administration Act* (Ontario); and
 - (F) the powers of the Minister of Finance to effect set-offs against amounts owing by Ontario pursuant to section 43 of the *Financial Administration Act* (Ontario); and
- (vi) the execution, delivery, and performance by IO of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, or any regulations made in respect thereof;
 - (B) the *Executive Council Act* (Ontario);
 - (C) any Applicable Law; or
 - (D) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected.
- (b) Metrolinx represents and warrants to Project Co, on a several basis, that as of Commercial Close:
- (i) Metrolinx is a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and has all of the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement in its own name as a Crown agency of the Province in accordance with section 3 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16;
 - (ii) subject to Sections 6.2(b)(v)(C), (D) and (E), Metrolinx is entering into this Project Agreement in its own name as a Crown agency of the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind itself personally to this Project Agreement and to provide recourse to the Province in accordance with the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, including section 35 thereof, and Project Co is entitled to rely upon Metrolinx's authority to bind itself and the recourse to the Province on such basis in respect of all other agreements, instruments, undertakings and documents executed and delivered by Metrolinx that are required by this Project Agreement to be executed and delivered by Metrolinx;
 - (iii) subject to Sections 6.2(b)(v)(C), (D) and (E), Metrolinx has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments,

undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (iv) Metrolinx has obtained all necessary approvals to enter into this Project Agreement as a Crown agency;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Metrolinx and constitutes a legal, valid, and binding obligation of Metrolinx, enforceable against Metrolinx, subject to the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction may not be available against Metrolinx and the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against Metrolinx or the Province or the property of Metrolinx or the Province;
 - (D) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
 - (E) with regard to the recourse against the Province, section 35 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and the powers of the Minister of Finance to effect set-offs against amounts owing by the Province pursuant to section 43 of the *Financial Administration Act*, R.S.O. 1990, c. F.12;
- (vi) the execution, delivery, and performance by Metrolinx of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) the *Metrolinx Act, 2006*, S.O. 2006, c. 16, or any regulations made in respect thereof;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected; and
- (vii) Metrolinx has, or will have, licence rights of use and access to, on and over the Metrolinx Lands sufficient to enable Contracting Authority to grant or to cause to be granted to Project Co the access rights contemplated in Section 16.1.

- (c) Contracting Authority represents and warrants to Project Co, on a joint and several basis, that as of Commercial Close, no Contracting Authority Event of Default has occurred and is continuing.

7. BACKGROUND INFORMATION

7.1 Review of Background Information

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

7.2 No Warranty for Background Information

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

7.3 No Claims or Liability in Respect of Background Information

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

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

7.4 Exceptions

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

8. PROJECT DOCUMENTS

8.1 Project Documents

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

8.2 Ancillary Documents

- (a) Project Co shall not:
 - (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 27.3, 49.3 and 50.2 or otherwise to prevent or cure a Project Co

Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);

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

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

8.3 Changes to Lending Agreements and Refinancing

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

8.4 Compliance with Lending Agreements

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

9. CONTRACTING AUTHORITY RESPONSIBILITIES**9.1 General**

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

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

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

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

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

10.3 General Responsibilities and Standards

- (a) Project Co shall, at its own cost and risk, perform and complete the Works:
- (i) in accordance with the Project Works Schedules and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement,
 - (A) achieve Substantial Completion by the Scheduled Substantial Completion Date; and
 - (B) achieve Final Completion by the Scheduled Final Completion Date;
 - (ii) in compliance with Applicable Law;
 - (iii) so as to satisfy the Output Specifications;
 - (iv) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
 - (v) in accordance with Good Industry Practice and to meet the standards followed by professionals, manufacturers, contractors and trades who are experienced in work on infrastructure that is comparable to the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (vi) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
 - (vii) in a timely and professional manner;
 - (viii) with due regard to the health and safety of persons and property;
 - (ix) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of Contracting Authority, any Province Person or any Government Entity to comply with Applicable Law;
 - (x) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Governmental Activities;

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- (xi) coordinate with the applicable Municipality, the Region of Peel and MTO all Construction Activities relating to Existing Third Party Infrastructure owned by the applicable Municipality, the Region of Peel and MTO and the New Third Party Infrastructure, including the provision of any Project Works Schedule relating to such infrastructure, so as to minimize the impact of Construction Activities on the applicable Municipality, the Region of Peel and MTO services provided by the applicable Municipality, the Region of Peel and MTO to the public; and
 - (xii) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall cooperate with Contracting Authority in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of Contracting Authority's obligations under this Project Agreement.
- (c) **[Intentionally Deleted].**
- (d) Project Co shall, at its own cost and risk, immediately notify Contracting Authority upon the receipt or notice of (and provide Contracting Authority with copies of any correspondence received in relation to), any incident report, investigation report or similar correspondence (in each case, whether in draft or final form) issued by the MOL or any other Governmental Authority in respect of the Works.
- (e) If Metrolinx executes an agreement with MTO, a Municipality, the Region of Peel or any third party owner of infrastructure which affects this Project (each, a "**Third Party Agreement**") and Metrolinx provides a copy of the Third Party Agreement or a template agreement upon which Metrolinx intends to base a Third Party Agreement (each, a "**Template Third Party Agreement**") to Project Co, then the following shall apply:
- (i) If, at any time prior to the Technical Submission Deadline, Metrolinx provides,
 - (A) a copy of an executed Third Party Agreement to Project Co; or
 - (B) a copy of a Template Third Party Agreement to Project Co, and Metrolinx subsequently enters into a Third Party Agreement on terms and conditions that are not materially inconsistent with the Template Third Party Agreement in a manner that would result in a material change to the Works (including, for clarity, if Metrolinx enters into the Third Party Agreement following the Technical Submission Deadline),then Project Co shall, at Project Co's own cost, ensure that Project Co and the Project Co Parties do not, in any way whatsoever, contravene or cause Metrolinx to contravene the applicable Third Party Agreement(s).
 - (ii) If, at any time following the Technical Submission Deadline, Metrolinx provides a copy of a Third Party Agreement to Project Co (and provided that Metrolinx did not provide a copy of the applicable Template Third Party Agreement to Project Co prior to the Technical Submission Deadline in accordance with Section 10.3(e)(i)(B)), then,

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

11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION

11.1 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the New Metrolinx Infrastructure and the New Third Party Infrastructure and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 11.1.
- (b) In order to develop the detailed design of the New Metrolinx Infrastructure and New Third Party Infrastructure, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 – Environmental Obligations) and the Contracting Authority Representative and the Contracting Authority Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any New Metrolinx Infrastructure or New Third Party Infrastructure or a change in the Works, then such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) The further development of the design of the New Metrolinx Infrastructure and New Third Party Infrastructure and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (d) The Parties agree that Appendices A and B to Schedule 10 – Review Procedure are initial lists of Design Data and other items that will require design review, which Design Data and other items shall include:
 - (i) design development drawings, reports, schedules and specifications for the New Metrolinx Infrastructure and New Third Party Infrastructure, progressed from

Commercial Close, showing all engineering and non-engineering design information sufficient to allow for the development of working drawing documentation (collectively, the “**Design Development Submittals**”);

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

- (i) obtain written consent from the applicable third party owner of the New Third Party Infrastructure to undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Project Agreement; and
 - (ii) following the written consent contemplated in Section 11.1(i)(i), undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Project Agreement.
- (j) Neither Contracting Authority nor any Province Person will have any liability:
- (i) if a document submitted by Project Co and reviewed by Contracting Authority, the Contracting Authority Representative or the Contracting Authority Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the Contracting Authority Representative and the Contracting Authority Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Contracting Authority Representative and/or Contracting Authority Design Team, as applicable, as soon as practicable following receipt of a written request from the Contracting Authority Representative.
- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and Contracting Authority may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

11.2 Start-Up Meeting

- (a) Within 10 Business Days after Commercial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Contracting Authority to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
 - (i) Project Co’s plan to develop a successful partnership with Contracting Authority for the purpose of supporting Contracting Authority in achieving its vision, mission and core values;
 - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;

- (iii) Project Co's process to ensure optimum design quality;
- (iv) Project Co's approach to ensure that all Project Co Parties perform the Works, as applicable, as a fully integrated team;
- (v) a proposed schedule of Works Submittals which is consistent with the Interim Baseline Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow sufficient time for review of each Works Submittal by the Contracting Authority Representative, taking into account both the resources available to the Contracting Authority Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Baseline Works Schedule;
- (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the Contracting Authority Design Team;
- (vii) Project Co's approach to timing, construction and adjustment; and
- (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation and that takes into account the document control and security protocol described in Section 42.5(f).

11.3 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings with the Contracting Authority Design Team (the "**Design Review Meetings**") upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the Contracting Authority Representative;
 - (ii) all Design Review Meetings shall be held in person in the City of Toronto, Ontario, except where otherwise agreed by the Parties, acting reasonably;
 - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings, and Project Co shall incorporate such schedule into each of the relevant Project Works Schedules;
 - (iv) Project Co shall circulate to Contracting Authority and the Contracting Authority Design Team an agenda for each of the Design Review Meetings no later than 10 Business Days prior to the relevant Design Review Meeting;
 - (v) in advance of a Design Review Meeting, Project Co may submit to the Contracting Authority Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform Contracting

Authority on the development of New Metrolinx Infrastructure and New Third Party Infrastructure design and provide an opportunity for dialogue on compliance with the requirements of the Project Agreement. If a Proposal Part corresponds to the interim submissions, then Project Co shall ensure that the interim submissions are substantially the same content and level of detail as the corresponding Proposal Part. For greater certainty,

- (A) interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 – Review Procedure; and
 - (B) the requirement for Project Co to submit interim submissions that are substantially the same content and level of detail as the corresponding Proposal Part, shall not,
 - (I) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review any Design Development Submittals or Construction Document Submittals in accordance with Schedule 10 – Review Procedure; or
 - (II) constitute acceptance by Contracting Authority of the corresponding Proposal Part or any Design Development Submittal or Construction Document Submittal in accordance with Schedule 10 – Review Procedure;
- (vi) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within five Business Days after each Design Review Meeting, Project Co shall provide to Contracting Authority and the Contracting Authority Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting; and
- (vii) Contracting Authority and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Works Submittals to which Schedule 10 – Review Procedure applies, and that Contracting Authority shall not be bound by the input provided in connection with the Design Review Meetings.
- (b) The Parties shall, together with the Contracting Authority Design Team, hold Design Review Meetings prior to the submission of:
- (i) each of the Design Development Submittals; and
 - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of Contracting Authority and the Contracting Authority Design Team input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 – Review Procedure.

- (d) The applicable third party owners of New Third Party Infrastructure may attend Design Review Meetings relating to New Third Party Infrastructure.

11.4 Performance of Design Obligations

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

11.5 Works Submittals

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

11.6 Documents

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

11.7 General Construction Obligations

- (a) Without limiting Section 10.3:
- (i) Project Co is solely responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, Plant, equipment and materials) necessary for the construction and commissioning of the New Metrolinx

Infrastructure and the New Third Party Infrastructure, and all other performance of the Works.

- (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Quality Management;
 - (B) ensure that,
 - (I) no works other than the Works under this Project Agreement are constructed on the Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure by Project Co, any Project Co Party or any person for whom Project Co is responsible at law; and
 - (II) the New Metrolinx Infrastructure is constructed only on the Metrolinx Lands and MTO Lands in accordance with Schedule 15 – Output Specifications;
 - (C) protect the Works from all of the elements, casualty and damage;
 - (D) in respect of Plant, equipment, Products and materials incorporated in the Works, use Plant, equipment, Products and materials that:
 - (I) are of a kind that are consistent with the Output Specifications;
 - (II) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
 - (III) where they differ from the Output Specifications, have been substituted with Contracting Authority’s prior written consent in accordance with Section 11.22.
- (iii) Without limiting Project Co’s obligations pursuant to Section 11.13 or Project Co’s indemnity pursuant to Section 46.1, Project Co shall, at all times prior to the Substantial Completion Date, and, subject to Section 11.13(g), thereafter any time Project Co is undertaking Construction Activities, be responsible for maintaining and securing the Metrolinx Lands to prevent access onto the Metrolinx Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 16.1 shall include rights for Project Co to do so.
- (iv) Project Co shall not, and Project Co shall ensure that the Project Co Parties do not, in any way whatsoever, contravene or cause a contravention of any labour-related contractual obligation or agreement or any provision of any collective agreement to which the City of

Toronto is a party that is applicable to the New Third Party Infrastructure owned by the City of Toronto and constructed pursuant to this Project Agreement, as such collective agreements or labour-related agreements may be amended from time to time.

- (b) Project Co shall provide a construction site office for use by Contracting Authority, at the location(s) specified in Schedule 15 – Output Specifications, and in accordance with the requirements set out in Schedule 15 – Output Specifications.

11.8 Permits, Licences, Approvals and Agreements

- (a) Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
 - (ii) except for those obligations which are identified as Contracting Authority obligations in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements, assume all of the obligations of Contracting Authority under the Contracting Authority Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals);
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms;
 - (iv) comply with and perform all obligations and requirements of Project Co which are identified in the “Responsibility and Requirements” column in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements;
 - (v) provide all security, including all letters of credit, that may be required in connection with any Project Co Permits, Licences, Approvals and Agreements, provided that, if Contracting Authority is able to obtain an exemption from such security on behalf of Project Co and with respect to the Project,
 - (A) Project Co shall provide to Contracting Authority an accurate accounting of the costs and expenses avoided by Project Co as a result of any such exemption; and
 - (B) notwithstanding any other provision of this Project Agreement, Contracting Authority shall be permitted to deduct an amount equal to all costs and expenses that were avoided by Project Co as a result of any such exemption from the Substantial Completion Payment or any Milestone Payment; and
 - (vi) implement a tracking system in respect of all Permits, Licences, Approvals and Agreements for which Project Co is responsible to obtain, provide or perform under the Project Agreement in accordance with the requirements set out in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements.

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

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

11.9 MTO Encroachment Permit

- (a) If, at any time prior to the Scheduled Final Completion Date, MTO fails to issue to Project Co, on or before the applicable MTO Encroachment Permit Deadline, an MTO Encroachment Permit with no terms or conditions or with terms and conditions that are consistent with the MTO Encroachment Permit Requirements, then any delay or additional costs in respect of the Works caused by the circumstances set out in this Section 11.9(a) shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event, provided that:

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- (i) Project Co has complied with Applicable Law;
 - (ii) Project Co has fulfilled and complied with all MTO Encroachment Permit Requirements, in each case in accordance with any deadline imposed by this Project Agreement or MTO, including providing timely and thorough responses to questions or concerns posed by MTO in respect of the applicable MTO Encroachment Permit;
 - (iii) if the application for an MTO Encroachment Permit includes or is required to include the design of the New Metrolinx Infrastructure or the New Third Party Infrastructure, then prior to submitting such application,
 - (A) Project Co has represented the design of the New Metrolinx Infrastructure or New Third Party Infrastructure in the application by including the Construction Document Submittals that pertain to such infrastructure; and
 - (B) the Construction Document Submittals for the New Metrolinx Infrastructure or New Third Party Infrastructure has received a “NO COMMENT” or “MINOR NON-CONFORMANCE” (without the additional comment “RE-SUBMIT”) by the Contracting Authority Representative under Schedule 10 – Review Procedure;
 - (iv) Project Co’s application for the applicable MTO Encroachment Permit and Project Co's responses to all questions or concerns posed by MTO were in accordance with Good Industry Practice and met the MTO Encroachment Permit Requirements;
 - (v) Project Co has submitted the application for the applicable MTO Encroachment Permit in accordance with the timing for such submission in,
 - (A) the Baseline Works Schedule, Recovery Works Schedule or the Progress Works Schedule most recently delivered prior to the submission of the application for the applicable MTO Encroachment Permit, as applicable; and
 - (B) the Three Week Look-Ahead Schedule most recently delivered prior to the submission of the applicable application;
 - (vi) Project Co has provided Notice to Contracting Authority with respect to its applications for MTO Encroachment Permits in accordance with the following requirements:
 - (A) no later than two Business Days after submitting an application for an MTO Encroachment Permit, Project Co shall provide Contracting Authority with a copy of such application, together with evidence of receipt of such application by MTO;
 - (B) if Project Co has not received a notification from MTO that its application for an MTO Encroachment Permit is complete by the day that is 10 Business Days following the date of Project Co’s submittal of an application for an MTO Encroachment Permit, Project Co shall provide a Notice to Contracting Authority of such occurrence on the first Business Day following such 10th Business Day;

- (C) no later than two Business Days after receipt by Project Co from MTO of notification that Project Co's application for an MTO Encroachment Permit is complete, Project Co shall provide Contracting Authority with a copy of each such notification;
 - (D) Project Co shall provide Notice to Contracting Authority 15 Business Days prior to each MTO Encroachment Permit Deadline, and shall set out in the Notice whether or not MTO has issued the applicable MTO Encroachment Permit by such date; and
 - (E) no later than two Business Days after receipt by Project Co of an MTO Encroachment Permit, Project Co shall provide a copy of such MTO Encroachment Permit to Contracting Authority; and
- (vii) the MTO Encroachment Permit Tracking System is fully functional and available to Contracting Authority and the MTO, and the MTO Encroachment Permit Tracking System contains accurate information as to the status of the applicable MTO Encroachment Permit, all in accordance with the requirements set out in Section 11.10A .
- (b) For the purposes of the Project Agreement, the “**MTO Encroachment Permit Deadline**” for an MTO Encroachment Permit shall be the date that is 45 Business Days following receipt by MTO of Project Co's completed application for that MTO Encroachment Permit. For clarity, if MTO rejects an application for an MTO Encroachment Permit on the basis that it is incomplete, the MTO Encroachment Permit Deadline shall be re-determined based upon the date that MTO is in receipt of a revised and complete application for the MTO Encroachment Permit.
- (c) For clarity, Section 11.9(a) does not entitle Project Co to a Delay Event or a Compensation Event:
- (i) in the event that the MTO has issued the MTO Encroachment Permit on or before the applicable MTO Encroachment Permit Deadline, but has attached to the MTO Encroachment Permit terms and conditions that are consistent with the MTO Encroachment Permit Requirements but are unfavourable to Project Co or that Project Co disagrees with; or
 - (ii) with respect to,
 - (A) Permits, Licences, Approvals and Agreements that are related to, but are not MTO Encroachment Permits; or
 - (B) the Traffic and Transit Management Plan.
- (d) For clarity, Project Co shall not be entitled to a Delay Event pursuant to Section 32.1(a)(xiii) or Compensation Event pursuant to Section 33 unless all Project Co requirements set out in Section 11.9(a) have been satisfied.

11.10 Listed Project Co PLAAs

- (a) If, prior to the Scheduled Substantial Completion Date, an Issuing Authority fails to issue to Project Co, on or before the expiration of [REDACTED] per cent times the number of Business

Days designated for the applicable Listed Project Co PLAA in Appendix B to Schedule 1 – Definitions and Interpretation (each, a “**Listed Project Co PLAA Deadline**”), a Listed Project Co PLAA with no terms and conditions or with terms and conditions that are consistent with the Listed Project Co PLAA requirements, then any delay or additional costs in respect of the Works caused by the circumstances set out in this Section 11.10(a) shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event, provided that:

- (i) the applicable Project Co Permit, Licence, Approval or Agreement is a Listed Project Co PLAA;
- (ii) Project Co has fulfilled all obligations pursuant to the Applicable Law and has fulfilled and complied with all Listed Project Co PLAA Requirements, in each case in accordance with any deadline imposed by this Project Agreement or an Issuing Authority, including providing timely and thorough responses to questions or concerns posed by such Issuing Authority in respect of the Listed Project Co PLAA;
- (iii) Project Co has submitted a complete Listed Project Co PLAA application to the applicable Issuing Authority;
- (iv) Project Co has submitted the application for the applicable Listed Project Co PLAA in accordance with the timing for such submission in,
 - (A) the Baseline Works Schedule, Recovery Works Schedule or the Progress Works Schedule most recently delivered prior to the submission of the application for the applicable Listed Project Co PLAA, as applicable; and
 - (B) the Three Week Look-Ahead Schedule most recently delivered prior to the submission of the applicable application; and
- (v) Project Co’s application for the Listed Project Co PLAA and Project Co’s responses to all questions or concerns posed by an Issuing Authority were in accordance with Good Industry Practice.

For clarity, if an Issuing Authority rejects an application for a Listed Project Co PLAA on the basis that it is incomplete, the Listed Project Co PLAA Deadline shall be re-determined based upon the date that the Issuing Authority is in receipt of a revised and complete application for the Listed Project Co PLAA.

- (b) For clarity, Section 11.10(a) does not entitle Project Co to a Delay Event or a Compensation Event,
 - (i) in the event that an Issuing Authority has issued the Listed Project Co PLAA on or before the applicable Listed Project Co PLAA Deadline, but has attached to the Listed Project Co PLAA terms and conditions that are consistent with the Listed Project Co PLAA Requirements but are unfavourable to Project Co or that Project Co disagrees with;

- (ii) in the event that an Issuing Authority fails to issue to Project Co a Listed Project Co PLAA in respect of a Permit, Licence, Approval or Agreement that is not explicitly listed as a Listed Project Co PLAA;
- (iii) with respect to,
 - (A) Permits, Licences, Approvals and Agreements that are related to, but not explicitly included on, the Listed Project Co PLAAs; or
 - (B) the Traffic and Transit Management Plan; or
- (iv) if the Listed Project Co PLAA Tracking System is not fully functional and available to Contracting Authority and the applicable Issuing Authority, or if the Listed Project Co PLAA Tracking System does not contain accurate information as to the status of the applicable Listed Project Co PLAA, all in accordance with the requirements of Section 11.10A

11.10A PLAA Tracking Systems

- (a) Project Co shall, at its sole cost and expense, provide Contracting Authority with a web-based interface to track the status of:
 - (i) each Listed Project Co PLAA (including information on each stage of preparation, submission and approval, as applicable) (the "**Listed Project Co PLAA Tracking System**"); and
 - (ii) each MTO Encroachment Permit (including information on each stage of preparation, submission and approval, as applicable) (the "**MTO Encroachment Permit Tracking System**"),to a level of detail satisfactory to Contracting Authority, (each, a "**PLAA Tracking System**").
- (b) The PLAA Tracking Systems shall:
 - (i) include functionality to provide automated email alerts to a customizable frequency and list of email addresses;
 - (ii) be updated by Project Co each Business Day; and
 - (iii) be available to Contracting Authority, the MTO and any applicable Issuing Authority in real time each Business Day.
- (c) The Listed Project Co PLAA Tracking System shall:
 - (i) be operational no later than the date upon which the first Listed Project Co PLAA application is submitted;

- (ii) include a feature that highlights to Contracting Authority and each Issuing Authority each outstanding applicable Listed Project Co PLAA when it reaches the following milestone triggers:
 - (A) [REDACTED]% of the number of Business Days designated by the applicable Issuing Authority in Appendix B to Schedule 1 – Definitions and Interpretation for the applicable Listed Project Co PLAA;
 - (B) [REDACTED]% of the number of Business Days designated by the applicable Issuing Authority in Appendix B to Schedule 1 – Definitions and Interpretation for the applicable Listed Project Co PLAA; and
 - (C) five Business Days prior to the expiration of the Listed Project Co PLAA Deadline; and
- (iii) contain accurate information as to the status of the applicable Listed Project Co PLAA.
- (d) The MTO Encroachment Permit Tracking System shall:
 - (i) be operational no later than the date upon which the first MTO Encroachment Permit application is submitted; and
 - (ii) include a feature that highlights to Contracting Authority and the MTO each outstanding applicable MTO Encroachment Permit when it reaches the milestone triggers set out in Section 11.9(a)(vi).
- (e) Project Co shall submit documentation on the proposed design, functionality, and usage of the PLAA Tracking Systems to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure no later than 60 days after Financial Close.
- (f) Project Co shall provide separate written notice to the Contracting Authority Representative with respect to any outstanding Listed Project Co PLAA when it reaches the milestone triggers outlined in Section 11.10A(c)(ii).

11.11 Protection of Works and Property

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

Third Party Infrastructure), is damaged or destroyed prior to the Substantial Completion Date;

- (ii) the Works, including the New Metrolinx Infrastructure and the New Third Party Infrastructure (prior to the Handover of New Third Party Infrastructure), is damaged or destroyed after the Substantial Completion Date as a result of an act or omission of Project Co or a Project Co Party;
- (iii) the Existing Third Party Infrastructure is damaged or destroyed at any time during the Project Term as a result of an act or omission of Project Co or a Project Co Party; or
- (iv) any existing property of Contracting Authority on the Lands, including any Existing Infrastructure, or any property adjacent to the Lands, is damaged or destroyed as a result of an act or omission of Project Co or a Project Co Party,

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

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

- (e) Notwithstanding Sections 11.11(b) and 11.11(f), and without derogating from Project Co's obligations under Section 11.11(d) or any MTO Encroachment Permit, Reinstatement Work carried out by Project Co in respect of Existing Third Party Infrastructure and New Third Party Infrastructure that is not owned by a Municipality or the Region of Peel shall be planned and implemented by Project Co in consultation with the applicable third party.
- (f) If the Reinstatement Work is reasonably estimated to cost more than \$[REDACTED] (index linked) or in any other case where the Contracting Authority Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the Contracting Authority Representative acting reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the Contracting Authority Representative pursuant to Schedule 10 - Review Procedure a plan (a "**Reinstatement Plan**") prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:
- (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
 - (ii) Project Co's proposed schedule for the execution of the Reinstatement Work; and
 - (iii) the information required pursuant to Schedule 22 – Variation Procedure as if such plan were an Estimate,

and the Reinstatement Work must not be commenced until the Contracting Authority Representative consents thereto in accordance with Schedule 10 – Review Procedure except to the extent necessary to address any Emergency or public safety needs. Notwithstanding Section 11.11(c), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, immediately take such emergency action as is necessary to remove the danger.

- (g) Project Co shall cause the Reinstatement Work to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the Contracting Authority Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to Contracting Authority) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in

connection therewith, enter into a construction contract with Project Co and a direct agreement with Contracting Authority in substantially the same forms as the Design and Construction Contract and the Construction Contractor's Direct Agreement.

- (h) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 – Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.
- (i) If any Project Co Party has caused damage or destruction to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.14(g) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against Contracting Authority on account of damage or destruction alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.14(g) and Schedule 27 – Dispute Resolution Procedure.

11.12 Liability Unaffected

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

11.13 Safety

- (a) Project Co shall until the Substantial Completion Date, and following the Substantial Completion Date, solely in relation to Construction Activities:
 - (i) comply with the Contractor Site Specific Safety Manual;
 - (ii) keep the Site (including Existing Infrastructure on the Site), the Works, the New Metrolinx Infrastructure and the New Third Party Infrastructure in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site (including Existing Infrastructure on the Site), the New Metrolinx Infrastructure and the New Third Party Infrastructure and in the immediate vicinity of the Site (including Existing Infrastructure on the Site), the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site (including Existing Infrastructure on the Site), the New

Metrolinx Infrastructure and the New Third Party Infrastructure of any persons or creatures not entitled to be there;

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

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- (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.13(a) above; and
 - (ii) keep the Existing Infrastructure in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger to employees, visitors and other persons attending the Existing Infrastructure.
- (e) If the MOL determines, pursuant to the *Occupational Health and Safety Act* (Ontario), that Project Co is not the “constructor” for the Site or any portion thereof, then the following shall apply:
- (i) Project Co shall comply with the instructions of the “constructor” relating to matters of health and safety on the Site, methods and manner of construction, and coordination and scheduling of the “constructor’s” works with the Works;
 - (ii) If the activity or presence of Project Co or a Project Co Party on the Site caused, in whole or in part, MOL to determine that Project Co is not the “constructor” for the Site or any portion thereof, Project Co will immediately take any necessary remedial action, including vacating the Site to ensure that the MOL determines that Project Co is the “constructor”;
 - (iii) If a third party is named “constructor” by MOL, Project Co shall not interfere with or delay the third party’s work, and shall not do anything whatsoever that causes the third party to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario). Project Co shall immediately cease and desist any activity that results or has a likelihood of resulting in such interference with or delay of the work of the third party; and
 - (iv) If the MOL determines that either IO or Metrolinx, or both of IO and Metrolinx or a third party contractor has been designated as the “constructor” under the *Occupational Health and Safety Act* (Ontario), and such determination by the MOL is due to an act or omission of Project Co, Project Co shall indemnify Contracting Authority and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all of the liabilities arising from such determination by the MOL.
- (f) In the event that an act or omission of Project Co causes or contributes to an MOL determination that Project Co is not the “constructor” for the Site or any portion thereof, or if Project Co is denied access to the Site pursuant to Section 11.13(e)(ii), Project Co will not be eligible for a Delay Event or a Compensation Event.
- (g) Project Co acknowledges and agrees that, following the Substantial Completion Date, Project Co’s access to, and control of the Site may be subject to the activities of the Contracting Authority, Contracting Authority Parties or Other Contractors, and that Project Co may be required to undertake all or a portion of the Works under circumstances where a person other than Project Co is the “constructor” for all or a portion of the Site. Following the Substantial Completion Date, Project Co shall:

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- (i) provide Contracting Authority with at least 15 Business Days advance Notice of its intention to undertake Construction Activities on the Site, providing reasonable particulars;
 - (ii) participate with Contracting Authority and any party fulfilling the role of “constructor” in reviewing and coordinating construction schedules, when requested to do so by Contracting Authority;
 - (iii) coordinate its access to the Site with Contracting Authority and any party fulfilling the role of “constructor” in respect of all or a portion of the Site; and
 - (iv) comply with the instructions of any party that is fulfilling the role of “constructor” under the *Occupational Health and Safety Act* (Ontario) relating to matters of health and safety, methods and manner of construction (where applicable), and coordination and scheduling of the Works. Project Co shall not interfere with, and shall not do anything whatsoever that causes the “constructor” to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario).
- (h) Project Co shall comply with Schedule 34 – Construction Safety.

11.14 Additional Works and Third Party Works

- (a) Project Co shall, having regard to Project Co’s obligations set out in Section 17, arrange and carry out all coordination of the Works with the Third Party Works directly with the applicable Third Party Contractor.
- (b) Contracting Authority may, in its sole discretion, carry out Additional Works.
- (c) Contracting Authority may assign the responsibility for directing methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co. For clarity, Contracting Authority may, in its sole discretion, assign such responsibilities to Project Co.
- (d) In connection with the Additional Works taking place prior to the Substantial Completion Date, or thereafter where Project Co is designated as the “constructor”, Contracting Authority shall,
 - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with the Works;
 - (ii) enter into separate contracts with Additional Contractors,
 - (A) under conditions of contract which are compatible with the conditions of this Project Agreement;
 - (B) that require Additional Contractors to comply with Section 11.14(e) and all directions of Project Co in respect of any matter regarding health and safety on the Site, and methods and manner of construction (where applicable); and

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- (C) that require Additional Contractors to comply with Project Co's coordination and scheduling of the Additional Works; and
- (iii) ensure that insurance coverage is provided by each Additional Contractor as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED].
- (e) In connection with the Additional Works, if Contracting Authority has assigned responsibilities to Project Co pursuant to this Section 11.14, Project Co shall,
- (i) provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works to be performed under this Project Agreement;
- (ii) assume overall responsibility for compliance with all aspects of,
- (A) Applicable Law relating to health and safety at the Site, including all the responsibilities of the "constructor" under the *Occupational Health and Safety Act* (Ontario); and
- (B) the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, Schedule 15 – Output Specifications,
- prior to the Substantial Completion Date and, exercised in a manner consistent with the *Occupational Health and Safety Act* (Ontario), at any time that Project Co is acting as a "constructor" on the Site following the Substantial Completion Date;
- (iii) provide Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works, as applicable;
- (iv) participate with Contracting Authority and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by Contracting Authority; and
- (v) if part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to Contracting Authority in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against Contracting Authority by reason of such readily apparent deficiencies.
- (f) In the case of Additional Works carried out prior to Substantial Completion, if:
- (i) any Additional Contractors cause any damage to the Works;

- (ii) Project Co incurs any additional costs or there is any delay in the Works as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
- (iii) subject to the performance by Project Co of its obligations under this Section 11.14, if Project Co incurs any additional costs or there is any delay in the Works as a result of any such Additional Works (other than Additional Work that is required to meet the Output Specifications and provided such Additional Work is performed by such Additional Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with Contracting Authority),

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

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

Business Days after a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:

- (A) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless Contracting Authority determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or will not result in any material negative consequence on Project Co's ability to perform any of the Works and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (i) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors on and to the Works performed by Project Co shall not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

11.15 Protest and Trespass

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

material damage to property where, in such circumstances, such Notice may be given to Contracting Authority less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Contracting Authority Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:

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

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

- (e) If Project Co experiences a Protest Action on the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and New Metrolinx Infrastructure and Project Co has,
- (i) fully complied with the provisions of Sections 11.13, 11.15(a), 11.15(b), 11.15(c) and 11.15(d); and
 - (ii) exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a court of first instance and to enforce such injunction or other remedy granted by such court to remove Protesters and Trespassers in such Protest Action from the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and New Metrolinx Infrastructure, provided that Project Co shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance with respect to such removal of Protestors and Trespassers,

then,

- (iii) such Protest Action shall, subject to and in accordance with Section 32, be treated as a Delay Event; and
 - (iv) Project Co shall be entitled to a Variation subject to and in accordance with Schedule 22 – Variation Procedure except that payment to Project Co in accordance with this Section 11.15(e)(iv) shall exclude, in accordance with Section 11.15(f), the first \$[REDACTED] of all Direct Costs incurred by Project Co cumulatively in connection with all Protest Actions throughout the Project Term, which would have been payable to Project Co in accordance with this Section 11.15(e)(iv).
- (f) For clarity, the first \$[REDACTED] of all Direct Costs incurred by Project Co cumulatively in connection with all Protest Actions throughout the Project Term, which would have been payable to Project Co by Contracting Authority under Section 11.15(e)(iv) shall be at Project Co's sole cost and expense. For the purposes of calculating the first \$[REDACTED] of such Direct Costs, such amount shall not include,
- (i) any amount or amounts which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy; or
 - (ii) [REDACTED].

11.16 Adjacent Developments

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

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

11.17 Defective Works

- (a) Prior to Substantial Completion:
- (i) Project Co shall promptly Make Good any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement, or any deficiency, defect or error in relation to any Product (collectively, a “**Construction Defect**”) whether or not such Construction Defect has been incorporated into the New Metrolinx Infrastructure or the New Third Party Infrastructure and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through

carelessness or other act or omission of Project Co. The correction of Construction Defects shall be at Project Co's sole cost and expense. Project Co shall Make Good, in a manner acceptable to the Independent Certifier, all Construction Defects, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Project Works Schedules, provided that Project Co shall prioritize the correction of any Construction Defects that in the sole discretion of Contracting Authority is determined to adversely affect the day to day operation of Contracting Authority.

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

11.18 Warranty Obligations

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

Authority's behalf industry-standard or other equipment warranties in accordance with Section 11.18(e); and

- (ii) correct and Make Good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works ("**Construction Latent Defect**"), provided Contracting Authority gives Project Co written Notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the Limitations Act, 2002 (Ontario).
- (c) The warranties set out in this Section 11.18 shall each cover labour and material, including, the costs of removal and replacement of covering materials. None of the warranties shall limit extended warranties on any Product or any item of equipment called for elsewhere in Schedule 15 – Output Specifications or otherwise provided by any manufacturer of such Product or item of equipment. Project Co shall ensure that all extended warranties specified in the Project Agreement are provided and shall, in the case of the New Third Party Infrastructure, assign to the third party owner of the New Third Party Infrastructure all such extended warranties as the third party owner may direct.
- (d) **[Intentionally Deleted]**
- (e) Project Co shall obtain warranties from the manufacturers of each of the Products and items of equipment for the duration(s) and in accordance with the applicable requirements specified in Schedule 15 – Output Specifications in the name of and to the benefit of Project Co, Contracting Authority in the case of New Metrolinx Infrastructure, and the applicable third party owner in the case of New Third Party Infrastructure. Where, in respect of a Product warranty or equipment warranty, the Output Specifications do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and Contracting Authority which shall extend no less than the applicable Warranty Period. Each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to, in the case of New Metrolinx Infrastructure and New Third Party Infrastructure, the Substantial Completion Date. Project Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under this Section 11.18(e), is fully assigned to Contracting Authority or the third party owner of New Third Party Infrastructure, as applicable, at no cost or expense to Contracting Authority or the third party owner, at the end of the Warranty Period, as such Warranty Period may be extended in accordance with Section 11.19(a).
- (f) Contracting Authority may, in its sole discretion, assign the Project Co warranties set out in this Section 11.18 to the applicable third party owner of the New Third Party Infrastructure, and shall provide Notice to Project Co of any such assignment of Project Co warranties. On the commencement of the first Warranty Period for each of the New Metrolinx Infrastructure and the New Third Party Infrastructure, Project Co shall provide at least two copies of each of the compilations of warranty certificates, one compilation for each of the New Metrolinx Infrastructure and one compilation for each category of New Third Party Infrastructure, as categorized by ownership of the New Third Party Infrastructure. Project Co shall update all

copies of each of the compilations from time to time as each Warranty Period commences. Each of the compilations shall indicate the start and completion date of each Project Co warranty.

- (g) Subject to Section 11.14, Project Co acknowledges that,
- (i) with respect to the New Metrolinx Infrastructure, Contracting Authority may, in its sole discretion; and
 - (ii) with respect to the New Third Party Infrastructure, the applicable third party owner may, in its sole discretion,

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

11.19 Warranty Work and Prompt Repair of Warranty Work

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

by Contracting Authority, with respect to the New Metrolinx Infrastructure, or the third party owner, with respect to the New Third Party Infrastructure, to Project Co.

(c) Project Co acknowledges and agrees that if,

(i) Contracting Authority with respect to the New Metrolinx Infrastructure; or

(ii) the third party owner of the New Third Party Infrastructure,

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

(d) If Project Co fails to carry out the Warranty Work in accordance with Section 11.18, and in the time specified in Section 11.19(b) or subsequently agreed upon, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority and the third party owner, as applicable, may correct the Works at the sole risk, cost and expense of Project Co and may draw down on the Warranty Letter of Credit to fund or as reimbursement for such costs and expenses.

(e) Project Co acknowledges and agrees that all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in Schedule 15 – Output Specifications, apply to Project Co's performance of its obligations in accordance with Sections 11.18 and 11.19.

(f) After the Handover of the New Third Party Infrastructure, Project Co shall be solely responsible for obtaining access from the applicable third party for the purpose of carrying out Warranty Work. Project Co acknowledges that such access to the New Third Party Infrastructure may be subject to such limitations as may be imposed by the applicable third party owner, and that Project Co may be required to obtain a Permit, Licence, Approval or Agreement to access the New Third Party Infrastructure for the purpose of carrying out Warranty Work. Without limiting Project Co's obligation to carry out the Warranty Work, if Project Co,

(i) has made commercially reasonable efforts to access New Third Party Infrastructure for the purpose of carrying out Warranty Work and is otherwise in compliance with all of Project Co's obligations pursuant to the Project Agreement; and

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

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

Project Co's failure to perform Warranty Work on that portion of the New Third Party Infrastructure.

- (g) The warranties set out in Sections 11.18 and 11.19 shall not deprive Contracting Authority or any third party owner of New Third Party Infrastructure of any action, right or remedy otherwise available to Contracting Authority or the third party owner at law or in equity, and the periods referred to in this Section 11.19, shall not be construed as a limitation on the time in which Contracting Authority or the third party owner may pursue such other action, right or remedy.
- (h) Neither test results, nor selection or approval by Contracting Authority or the Contracting Authority Representative of testing entities, nor any other thing in the Project Agreement shall have the effect of limiting or shortening or otherwise affecting in any way whatsoever the duration, effectiveness or content of any guarantee or warranty set forth in any other document or material forming part of the Project Agreement.

11.20 Warranty Letter of Credit

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

Guarantors pursuant to Schedule 29 – Form of Performance Guarantee of Construction Guarantors.

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

11.21 Coordination and Minimization of Disruption and Interference

- (a) Project Co shall perform the Works so as to coordinate with,
 - (i) the operations of, and the performance of any services by, Contracting Authority, any Province Persons, any Governmental Authority, any Other Contractor, any Utility Company,

MTO, any Municipality, the Region of Peel and any Transit System, including the performance of the Governmental Activities and the Other Works; and

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

- (B) the construction, operations or maintenance activities of Contracting Authority, any Province Person, any Governmental Authority, any Other Contractor, any Utility Company, MTO, any Municipality, the Region of Peel, any Transit System, and with respect to any road or roadway, including the performance of the Governmental Activities and the Other Works; and
 - (C) the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure including the Existing Infrastructure (other than the New Metrolinx Infrastructure and the New Third Party Infrastructure), whether under the control or in the possession of Contracting Authority or any other person, and Project Co shall minimize any lane or ramp closures or diversions, track closures or diversions and traffic diversions or restrictions.
- (d) To the extent that the Project necessitates interference, in any way, with the operation of the existing transit systems, existing highway systems, or Existing Infrastructure, including the imposition of any closures or detours on the existing highway systems or Existing Infrastructure, Project Co shall use commercially reasonable efforts to cooperate with Contracting Authority, Province Persons, Governmental Authorities, Other Contractors, Utility Companies, MTO, the Municipalities, the Region of Peel, and Transit Systems and other relevant third parties to ensure the continued operation of the existing transit systems, highway systems, and Existing Infrastructure.
- (e) Project Co shall develop and implement protocols in furtherance of its obligations as set out in this Section 11.21 in accordance with the Traffic and Transit Management Plan and the Output Specifications.

11.22 Substitutions

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

11.23 Change in Standards

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the New Metrolinx Infrastructure and the New Third Party Infrastructure, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change. If, after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. If Contracting

Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 11.23 shall not apply where a change in a technical standard is also a Change in Law.

11.24 Subcontractors and Suppliers

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

11.25 Apprenticeship and Workforce Development Plan

- (a) No later than 90 days after Financial Close, Project Co shall provide a plan setting out Project Co's Project-specific approach to promoting apprenticeship training and workforce development opportunities in connection with the completion of the Works on the Project (the "**Apprenticeship and Workforce Development Plan**") for review by Contracting Authority. The Apprenticeship and Workforce Development Plan shall include,
- (i) the identification of trades and subtrades determined to be in-demand for the Project on a trade-by-trade basis and an estimate of the year they would be required;
 - (ii) a description of specific objectives and methods for training apprentices for the Project on a trade-by-trade basis;
 - (iii) a description of specific objectives and methods for training and placement opportunities for students through the Ontario Youth Apprenticeship Program and pre-apprentices for the Project;
 - (iv) a description of apprenticeship opportunities, including the number of apprentice and skilled worker hires for in-demand trades and subtrades, and estimated apprentice work hours for each trade required on the Project;
 - (v) a description of the specific training and certifications needed for apprentices, pre-apprentices, students and other skilled workers on a trade-by-trade basis and training methods for upskilling;
 - (vi) a description of Project Co's plans to liaise with MLTSD on available financial incentives to enhance apprenticeship opportunities through the Project;
 - (vii) the number of apprentices to be employed for the Works, which shall be in accordance with journeyman to apprentice ratios established in section 60 of the *Ontario College of Trades and Apprenticeships Act, 2009, S.O. 2009, c. 22*, as amended from time to time; and
 - (viii) a confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable.
- (b) Contracting Authority may, in its sole discretion, release Project Co's Apprenticeship and Workforce Development Plan to the public. Project Co's Apprenticeship and Workforce Development Plan shall not be Confidential Information.
- (c) Contracting Authority shall provide a summary of Project Co's Apprenticeship and Workforce Development Plan to Ministry of Labour, Training and Skills Development staff to inform policy design related to workforce development.

11.26 [Intentionally Deleted]**11.27 COR Certification**

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

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

Project Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify Contracting Authority that a H&S Certification Default Event has occurred, and:
 - (A) produce and deliver to Contracting Authority a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be;
 - (B) produce and deliver to Contracting Authority a plan showing the steps that are to be taken to have the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than 30 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Reinstatement Plan not more than five Business Days from the date on which such request is made by Contracting Authority;
 - (C) no later than five Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b); and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required; or
- (vii) within five Business Days after receipt of the Notice from Contracting Authority under Section 11.27(b)(iv) or Section 11.27(b)(v):

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

11.28 Demolition Requirements

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

will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);

- (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition work plans and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and
- (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition,

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

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

- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
- (i) Contracting Authority is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
 - (ii) Contracting Authority has received a report, in form and substance satisfactory to Contracting Authority, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.
- (d) For clarity, Project Co shall not be eligible for a Delay Event or a Compensation Event in connection with a Demolition Default Event or the recommencement of a Demolition pursuant to Section 11.28(c).

11.29 Liquidated Damages and Construction Enforcement Regime

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

11.30 Works, Goods, Equipment, Consumables and Materials

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

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

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

11.31 [Intentionally Deleted]

11.32 Executive Project Meetings

- (a) Subject to Sections 11.32(b) and 11.32(c), during the Project Term, either Party may, in its sole discretion and from time to time, schedule and hold meetings with senior executives of

Contracting Authority, Project Co and the Project Co Parties for such individuals to provide senior executives of Contracting Authority with an update on the progress of and issues with the Project (each is an “**Executive Project Meeting**”).

- (b) Either Party may, in its sole discretion, elect to schedule and hold an Executive Project Meeting upon the delivery of no fewer than 10 Business Days’ prior Notice to the other Party.
- (c) The precise date, time and location of each Executive Project Meeting shall be scheduled by Contracting Authority, acting reasonably.
- (d) Contracting Authority shall have the right to request the attendance of specific employees, officers, directors and other representatives of Project Co or any Project Co Party at each Executive Project Meeting, and, if requested to attend such meeting, Project Co shall use commercially reasonable efforts to ensure all such individuals attend.
- (e) No later than five Business Days prior to the date of each Executive Project Meeting, Project Co shall prepare and submit to Contracting Authority a one page (11” x 17” sized) summary (the “**Executive Project Meeting Document**”), which shall include the following information and be current to such date:
 - (i) the date of the Executive Project Meeting Document (in month and year format);
 - (ii) Project information, including the name of the Project, the name of Project Co and the names of the Project Co Parties, including their respective representatives in attendance;
 - (iii) a high-level Project schedule in respect of the Works, including Commercial Close, Financial Close, the design development phase, the construction phase, the testing and commissioning phases, the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date if such date is different from the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, and any other material high-level items on the critical path of, as applicable, the Interim Baseline Works Schedule or the Baseline Works Schedule;
 - (iv) a brief description of the status of the design process to date, including the number of (A) Works Submittals submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure; (B) Works Submittals for which the Contracting Authority Representative has assigned a comment of “NO COMMENT”, “MINOR NON-CONFORMANCE” or “MAJOR NON-CONFORMANCE” pursuant to Schedule 10 – Review Procedure; (C) Works Submittals under review by Contracting Authority pursuant to Schedule 10 – Review Procedure; and (D) Works Submittals scheduled to be submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure within six months following the Executive Project Meeting;
 - (v) a brief high-level description of the Construction Activities undertaken since the previous Executive Project Meeting, including three distinct progress photos;
 - (vi) Earned Value Metrics (as defined in Schedule 12 – Works Schedule Requirements) progress per construction month;

- (vii) a brief description of the top five issues Project Co desires to bring to the attention of Contracting Authority;
 - (viii) the number of total recordable injuries, lost time injuries, and non-lost time injuries per construction month;
 - (ix) the number of Non-Conformance Reports issued since Financial Close for each construction month by type (i.e. Critical Non-Conformance, Major Non-Conformance, and Minor Non-Conformance);
 - (x) the number of Project Co Permits, Licences, Approvals and Agreements opened and closed with an emphasis on delayed applications; and
 - (xi) any other information requested by Contracting Authority, acting reasonably.
- (f) All discussions at an Executive Project Meeting and documents exchanged between the Parties in respect of an Executive Project Meeting shall be on a without prejudice basis, and shall not limit or prejudice any Party's rights or obligations under this Project Agreement, including under Schedule 27 – Dispute Resolution Procedure.

11.33 Tunnel Boring Machine

- (a) The Parties acknowledge the uniqueness of the Tunnel Boring Machines being procured by or on behalf of Project Co or the Construction Contractor for the Project and the extended period of time for the manufacturing of same (as generally reflected in the Project Works Schedule) (the “**Procured TBM**”). The Parties acknowledge that loss of or damage to a Tunnel Boring Machine during the marine transport of same to the Lands (such loss or damage being a “**TBM Marine Event**”) may result in a critical path delay to the Project Works Schedule. For purposes of this Section 11.33, the Procured TBM shall include the Tunnel Boring Machines and all of their component parts in the case of transportation of the Tunnel Boring Machines in portions, and “marine transport” shall include the transportation of the Procured TBM over water only, and, for greater clarity, shall not include loading or unloading the Tunnel Boring Machines onto or off of the marine vessel on which it is being transported.
- (b) In the event that a TBM Marine Event occurs that results in demonstrated critical path delay to the Project Works Schedule of 60 Business Days or more arising from such TBM Marine Event, Project Co shall be entitled to a Delay Event pursuant to Section 32, provided that:
- (i) Project Co has satisfied the Notice requirements set out in Sections 11.33(f) and 11.33(g); and
 - (ii) the seaworthiness of the vessel used for the marine transport of the Procured TBM did not, directly or indirectly, materially contribute to the TBM Marine Event.
- (c) For clarity, Project Co shall not be entitled to a Delay Event due to the occurrence of a TBM Marine Event in the event that the critical path delay to the Project Works Schedule arising therefrom is less than 60 Business Days. If Project Co demonstrates a critical path delay of 60 Business Days or more arising from a TBM Marine Event, Project Co shall be entitled to time relief pursuant to Section 32 for the entire duration of such critical path delay. Project Co shall

take all commercially available measures reasonably appropriate under the circumstances to mitigate any delay arising from any TBM Marine Event.

- (d) Neither Project Co nor its Subcontractors shall be entitled to a Compensation Event or any other monetary compensation whatsoever from Contracting Authority under this Project Agreement as a result of any TBM Marine Event, regardless of the impact of such TBM Marine Event. In that regard, Project Co shall procure (or shall require the procurement of) marine transit insurance and marine delay-in start up insurance to mitigate the monetary losses arising from or relating to any TBM Marine Event.
- (e) Project Co (or the Construction Contractor) shall use commercially reasonable efforts to include within the purchase agreement (or supply contract, as the case may be) for the Procured TBM the requirement of the vendor or supplier of the Procured TBM to deliver a certificate of seaworthiness with respect to each vessel that will be used in the marine transportation of the Procured TBM to the Lands. If, despite using commercially reasonable efforts, such requirement is not included in the purchase agreement (or supply contract, as the case may be) for the Procured TBM, then Project Co (or the Construction Contractor) shall request and shall use commercially reasonable efforts to obtain a certificate of seaworthiness from either the insurer issuing the marine transit insurance and marine delay-in start up insurance policies applicable to the Procured TBM, or the operator (or operators) of the marine vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is obtained, Project Co shall promptly deliver same to the Contracting Authority and the Lender's Agent and such certificate shall establish a rebuttable presumption of the seaworthiness of the vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is not obtained, then the seaworthiness of the vessel (or vessels) transporting the Procured TBM to the Lands will be determined as at the time of the loss without presumption.
- (f) If Project Co believes that a TBM Marine Event has occurred and that as a result Project Co will experience a critical path delay to the Project Works Schedule of no less than 60 Business Days, Project Co shall submit written Notice to Contracting Authority of such TBM Marine Event within 10 Business Days following the date on which Project Co first became aware of the occurrence of the TBM Marine Event. This Notice shall include (i) preliminary details as to the circumstances of the TBM Marine Event, and (ii) a preliminary estimate of the critical path delay attributable to the TBM Marine Event.
- (g) Within 20 days after receipt by Contracting Authority of the Notice from Project Co to referred to in Section 11.33(f), Project Co shall submit to Contracting Authority a detailed written Notice which shall include a delay analysis and the effect that the TBM Marine Event will have on Project Co's ability to perform its obligations under this Project Agreement. As Project Co receives or becomes aware of any further information relating to the TBM Marine Event, it shall submit such further information to Contracting Authority as soon as practicable. Project Co shall supply any further information that Contracting Authority may reasonably require as promptly as practicable after such request.
- (h) Within 30 days after the Notice referred to in Section 11.33(g) has been delivered to Contracting Authority, Project Co and the Contracting Authority shall agree upon the time relief directly attributable to the TBM Marine Event in question (or it shall be determined pursuant to the

Dispute Resolution Procedure), which time relief shall result in a corresponding extension to the Scheduled Substantial Completion Date.

11.34 Pandemic and Epidemic Plans

- (a) No later than 90 days following Financial Close, Project Co shall, at its cost, submit a plan to Contracting Authority that sets out the activities and reporting to Contracting Authority that Project Co will implement as part of the Works to prepare for and respond to any potential or actual pandemic or epidemic that may affect the Works (including the COVID-19 pandemic or any subsequent outbreak of COVID-19) and satisfies the requirements of Section 11.34(b) (the “**Pandemic and Epidemic Response and Mitigation Plan**”).
- (b) The Pandemic and Epidemic Response and Mitigation Plan shall, at a minimum, satisfy the following requirements:
 - (i) outline the detailed steps Project Co and its Subcontractors have undertaken and will undertake to prepare for and respond to the effects of the COVID-19 pandemic or any potential future pandemic or epidemic that could occur and affect the Works, including a subsequent outbreak of COVID-19; and
 - (ii) in the event that, at any time during the Project Term, a specific pandemic or epidemic (including the COVID-19 pandemic or subsequent outbreak of COVID-19) is reasonably foreseeable and imminently likely to occur and affect the Works, Project Co shall update its Pandemic and Epidemic Response and Mitigation Plan accordingly, which shall, at a minimum, satisfy the requirements set out in Section 11.34(a), and be applicable *mutatis mutandis* in respect of such pandemic or epidemic.
- (c) The Pandemic and Epidemic Response and Mitigation Plan and all updates to such plan shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure.
- (d) In the event that, at any time prior to Substantial Completion, a specific pandemic or epidemic (including the COVID-19 pandemic or any subsequent outbreak of COVID-19) is reasonably foreseeable and likely to occur and affect the Works or otherwise occurs and affects the Works, Project Co shall, at its cost, promptly (at the request of Contracting Authority or on its own volition) update the Pandemic and Epidemic Response and Mitigation Plan on a monthly basis and submit each update with the next Works Report until such time as the Parties agree, acting reasonably, that either the pandemic or epidemic will not occur and affect the Works or such epidemic or pandemic has ended, no longer affects the Works and no further updates to such plan are required. Following the review by Contracting Authority of each updated Pandemic and Epidemic Response and Mitigation Plan pursuant to Schedule 10 – Review Procedure, Project Co shall, without limiting any other obligation of Project Co under the Project Agreement or Applicable Law, implement such plan in accordance with Schedule 10 – Review Procedure, at its cost and risk other than as provided for in Section 30.4.
- (e) Any Pandemic and Epidemic Response and Mitigation Plan (including any update thereto) or the potential or actual impact of any pandemic or epidemic on the Works may, at the request of a Party, be discussed at any meeting of the Works Committee or at any other meeting between the

Parties, if reasonably requested by a Party during the Project Term. Any Party may, acting reasonably, require that any such other meeting be on a "without prejudice basis".

11.35 Utility Agreements

- (a) For each Utility Agreement to be entered into between Project Co and THES, the form of which was made available as Background Information on or prior to the date that was 10 days prior to the Technical Submission Deadline (each being a “**Form of THES Utility Agreement**”), Project Co shall, or shall cause a Subcontractor to, execute and deliver each such Utility Agreement no later than 90 days after Financial Close, such Utility Agreement to be substantially in the form of the Form of THES Utility Agreements.
- (b) Project Co acknowledges and agrees that any revisions to the terms or conditions of a Form of THES Utility Agreement unilaterally proposed or required by Project Co, or are minor or administrative in nature, shall be at Project Co’s cost and risk.
- (c) In the event that Project Co executes and delivers to THES a completed Utility Agreement in the Form of THES Utility Agreement or in a form otherwise agreed to between Project Co and THES as described in Section 11.35(a), and THES fails to execute and deliver such Utility Agreement within 30 days of the date of the delivery of the Utility Agreement by Project Co to THES, and such failure to execute and deliver such Utility Agreement will materially adversely interfere with Project Co’s ability to perform the Works or will materially adversely affect Project Co’s cost of performing the Works, then:
 - (i) Project Co shall promptly provide Notice to Contracting Authority; and
 - (ii) such failure shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (d) In the event that Project Co executes and delivers a completed Utility Agreement in the Form of THES Utility Agreement or in a form otherwise agreed to between Project Co and THES as described in Section 11.35(a), and THES executes and delivers such Utility Agreement containing a Post-CC Utility Agreement Amendment (or communicates to Project Co that it will only enter into a Utility Agreement that incorporates a Post-CC Utility Agreement Amendment), then:
 - (i) Project Co shall promptly provide Notice to Contracting Authority informing Contracting Authority that a Post-CC Utility Agreement Amendment has been proposed by THES and providing details regarding such Post-CC Utility Agreement Amendment (a “**Post-CC Utility Agreement Amendment Notice**”);
 - (ii) Project Co shall, during the 30 day period following the date upon which Contracting Authority receives the Post-CC Utility Agreement Amendment Notice (or such longer period of time as the Parties may otherwise agree), use commercially reasonable efforts to resolve and settle the Post-CC Utility Agreement Amendment with THES; and
 - (iii) If:

- (A) Project Co has complied with its obligations under Sections 11.35(d)(i) and 11.35(d)(ii); and
 - (B) Project Co and THES are unable to resolve and settle the Post-CC Utility Agreement Amendment resulting in Project Co and THES failing to enter into the subject Utility Agreement, and such failure to enter into such Utility Agreement will materially adversely interfere with Project Co's ability to perform the Works or will materially adversely affect Project Co's cost of performing the Works, then:
 - (I) Project Co shall promptly provide Notice to Contracting Authority of the matters described in Section 11.35(d)(iii)(B); and
 - (II) subject to and in accordance with Schedule 22 - Variation Procedure, Project Co shall be entitled to a Variation.
- (e) If, pursuant to and in accordance with a Utility Agreement, THES identifies to Project Co, and requires the performance of, any works relating to the Utility Infrastructure that is the subject matter of such Utility Agreement, and in Project Co's reasonable opinion, such works are unreasonable and unnecessary for Project Co to perform as part of the Works, or are otherwise outside the scope of work contemplated by such Utility Agreement, and if the performance of such works will or is likely to affect the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:
- (i) Project Co shall promptly deliver Notice to Contracting Authority describing such works and providing such opinion; and
 - (ii) without limiting or prejudice to any right of Contracting Authority under the Project Agreement, Project Co may deliver a Project Co Variation Notice to Contracting Authority pursuant to and in accordance with Schedule 22 – Variation Procedure in respect of such works.

12. REPRESENTATIVES

12.1 The Contracting Authority Representative

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

Project Agreement, Contracting Authority shall perform or may, by written Notice to Project Co, promptly appoint an alternative Contracting Authority Representative to perform the functions which would otherwise be performed by the Contracting Authority Representative. Upon receipt of such written Notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative Contracting Authority Representative which is permitted by this Project Agreement as being authorized by Contracting Authority, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

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

12.2 The Project Co Representative

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

12.3 Communications to Representatives

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

12.4 Key Individuals

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

13. WORKS SCHEDULE REQUIREMENTS AND WORKS REPORT

13.1 Completion of the Works

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

- (ii) Final Completion by the Scheduled Final Completion Date.

13.2 Works Schedule Requirements

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

13.3 [Intentionally Deleted]

13.4 [Intentionally Deleted]

13.5 Notification of Early Substantial Completion

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

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

13.6 Works Report

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

- (iii) a Progress Works Schedule, Basis of Works Schedule Report, and Works Schedule Report all in accordance with Schedule 12 – Works Schedule Requirements;
- (iv) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
- (v) a narrative description of the status of any Proceeding at Risk Matter that has not been resolved pursuant to Section 14.6(d), in accordance with Schedule 27 – Dispute Resolution Procedure or otherwise;
- (vi) an update on those matters set out in Schedule 33 – Works Report Requirements;
- (vii) a detailed, narrative description of all issues relating to Warranty Work and warranties set out in Sections 11.18 and 11.19; and
- (viii) any other information specifically requested by Contracting Authority on the progress of the Works,

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

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

14. WORKS COMMITTEE

14.1 Establishment

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

14.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
 - (i) any design, construction and commissioning issues;
 - (ii) the Project Works Schedules, the Basis of Works Schedule Reports and the Works Schedule Reports;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety and security issues, including any design, configuration control, interfacing, training, testing, operational impact and other matters creating or giving rise to a safety or security issue or otherwise requiring attention and oversight;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by Contracting Authority or Project Co;
 - (vii) any Proceeding at Risk Matters referred to the Works Committee in accordance with Section 14.6;
 - (viii) any community and media relations issues in accordance with Schedule 18 – Communication and Public Engagement Protocol;
 - (ix) any issues related to the Traffic and Transit Management Plan and any issues related to the rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in Schedule 15 – Output Specifications;
 - (x) monitoring the Final Commissioning Program;
 - (xi) any issues related to Schedule 36 – Mobility Matters; and
 - (xii) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
 - (i) any amendment to or waiver of any provision of this Project Agreement;

- (ii) any change to a major milestone date set out in any Project Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
- (iii) any Variation;
- (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
- (v) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

14.3 Term of Works Committee

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

14.4 Replacement of Committee Members

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

14.5 Procedures and Practices

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

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

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

14.6 Proceeding at Risk

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

shall each promptly and diligently make a reasonable *bona fide* effort to resolve the Proceeding at Risk Matter.

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

15. QUALITY MANAGEMENT

15.1 Quality Management

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

Inspection is completed. An H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.

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

16. LAND ACCESS AND INVESTIGATION

16.1 Access to Metrolinx Lands

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

Licences, Approvals and Agreements tables attached as Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements and subject to the timing and extent of the grant of use and access to the Metrolinx Lands set out in Schedule 20 – Lands) to allow Project Co and such Project Co Parties to perform that part of the Works to be performed on Metrolinx Lands. The rights granted to Project Co pursuant to this Section 16.1(a) shall be effective on the later of,

- (i) the date of Financial Close; and
 - (ii) the commencement date for access to individual parcels of lands that comprise the Metrolinx Lands as set out in Schedule 20 – Lands.
- (b) Subject to Project Co’s obligation to comply with the other terms and conditions set forth in this Project Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands, act in a manner consistent with the obligations of Project Co under the Project Agreement.
- (c) In consideration for the use and access rights granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of Contracting Authority’s rights hereunder, and subject to any restrictions set out in Schedule 20 – Lands, Contracting Authority acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and Contracting Authority shall provide, access to the Metrolinx Lands without material interference by Contracting Authority or any Province Person for such period of time identified in Section 16.1(a). Project Co further acknowledges that following the Substantial Completion Date, Project Co’s access to the Metrolinx Lands shall be subject to the Contracting Authority Activities and Other Works.
- (e) Subject to Section 16.1(f), none of the rights granted pursuant to this Section 16.1 shall grant access to,
- (i) any lands beyond the boundaries of the Metrolinx Lands, or to any lands other than the Metrolinx Lands, other than easements and similar interests of Contracting Authority which benefit the Metrolinx Lands, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works or exceed any restrictions set out in Schedule 20 – Lands; or
 - (ii) any facilities or infrastructure of Contracting Authority, MTO, Municipalities, the Region of Peel, Utility Companies, or any other third parties, except as set out in Schedule 20 – Lands (which access, if any, is subject to Section 16.1(b)).
- (f) Contracting Authority shall provide Project Co with limited access to the Existing Metrolinx Infrastructure, to the extent necessary to perform the Works and subject to such reasonable conditions as are imposed by Contracting Authority.
- (g) The use and access rights provided in this Section 16.1 shall automatically terminate as of the Termination Date, save and except for any earlier termination of the use and access rights specified in Schedule 20 – Lands.

- (h) For greater certainty, the use and access rights provided in this Section 16.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Metrolinx Lands for use in the Works.
- (i) Contracting Authority shall acquire use of and access to the Metrolinx Lands described in Schedule 20 – Lands on or prior to the applicable commencement date for access set out in Schedule 20 – Lands. Contracting Authority shall provide Notice to Project Co of the commencement of access rights to the Metrolinx Lands as such access is obtained by Contracting Authority.

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

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

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

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

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

16.5 No Interest in Land, Facilities or Infrastructure

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

16.6 Non-Disturbance Agreement

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

16.7 Adjustments to Metrolinx Lands Available to Project Co

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

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

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

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

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

pursuant to this Section 16.7; and

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

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

16.8 Changes to Lands

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

16.9 Adequacy of the Lands

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

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

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

16.10 Inspection and Investigation of the Lands

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

16.11 No Warranty in Respect of Lands

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

16.12 No Claims in Respect of Lands

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

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

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

17.2 No Encumbrances

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

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

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

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

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

17.3 Construction Act

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

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

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

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

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

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

18.2 Geotechnical Site Conditions

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

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

18.3 Contamination

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

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

18.4 Items of Geological, Historical or Archaeological Interest or Value

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

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

- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.5(e) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.5 Major Existing Infrastructure Defects

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

- (i) at Contracting Authority's cost subject to and in accordance with Section 18.5(h) in respect of any Contracting Authority Major Existing Infrastructure Defect; and
 - (ii) at its own cost in respect of any Project Co Caused Major Existing Infrastructure Defect.
- (h) If Section 18.5(g)(i) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.
- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.6(d) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.6 Mislocated or Unknown Utility Infrastructure

- (a) **“Project Co Utility Infrastructure”** shall mean all Utility Infrastructure on, in, or under the Lands that:
- (i) was within the Knowledge of the Project Manager, as of the Financial Submission Deadline;
 - (ii) was described in or is readily apparent from the Subsurface Utility Engineering (SUE) Reports as of the Technical Submission Deadline other than Mislocated Utility Infrastructure;
 - (iii) Utility Infrastructure on, in, or under the City Right of Way that is outside of the study area limits of the Subsurface Utility Engineering (SUE) Reports;
 - (iv) was readily apparent from the Project Co Land Inspections;
 - (v) is a service connection; or
 - (vi) is street lighting and traffic signal cables owned by a Municipality, the Region of Peel or MTO.
- (b) **“Contracting Authority Utility Infrastructure”** means:
- (i) any Mislocated Utility Infrastructure; and
 - (ii) any other Utility Infrastructure on, or in the Lands, other than Project Co Utility Infrastructure.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Utility Infrastructure.
- (d) Any Contracting Authority Utility Infrastructure encountered by Project Co shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

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

18.7 Species-at-Risk

- (a) **“Project Co Species-at-Risk”** shall mean any Species-at-Risk which may be found on, in, at, or under the Lands:
 - (i) that were a Species-at-Risk as of the Technical Submission Deadline and the occurrence of which was described in the Environmental Assessments (including the location in which it was found);
 - (ii) the occurrence of which is caused or contributed to by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement (but only to the extent of such cause or contribution); or
 - (iii) that are new populations of Species-at-Risk in locations on the Lands caused by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement and which resulted in the creation of conditions deemed suitable habitat for Species-at-Risk in accordance with Applicable Law.
- (b) **“Contracting Authority Species-at-Risk”** shall mean any Species-at-Risk which may be found on, in, at, or under the Lands other than Project Co Species-at-Risk.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Species-at-Risk.
- (d) Any Contracting Authority Species-at-Risk encountered by Project Co shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

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

18.8 Site Condition Contingency Fund and Gainshare Payments

- (a) Following Commercial Close, Contracting Authority shall establish a contingency fund in the amount of \$[REDACTED] (the “**Site Condition Contingency Fund**”) for the Compensation Events arising from the events set out in Sections 32.1(a)(v), 32.1(a)(vi), 32.1(a)(vii), 32.1(a)(viii), 32.1(a)(ix) and 32.1(a)(x), and any Variations related to such events (each, a “**Site Condition Event**”).
- (b) If it has been determined, in accordance with Section 33.2(b), that a Site Condition Event has occurred, provided that Project Co complies with its obligations as set out in Sections 32 and 33, Contracting Authority shall draw from the Site Condition Contingency Fund in order to make payment to Project Co for that Site Condition Event, subject to and in accordance with Section 33.
- (c) Contracting Authority shall provide a reconciliation of the Site Condition Contingency Fund upon each payment to Project Co in accordance with Section 18.8(b). The reconciliation shall consist of the amount drawn from the fund to date and the remaining balance of the fund to date.
- (d) Project Co shall be entitled to payment of a gainshare amount with respect to the remaining balance in the Site Condition Contingency Fund as of the Substantial Completion Date, subject to and in accordance with the following rules:

- (i) Subject to Section 18.8(d)(ii), if, on the Substantial Completion Date, there exists a positive balance in the Site Condition Contingency Fund, Project Co shall be entitled to [REDACTED]% of such remaining amount (the “**Site Condition Gainshare Amount (Substantial Completion)**”). The Site Condition Gainshare Amount (Substantial Completion) shall be paid by Contracting Authority to Project Co as directed by Project Co no later than 30 days following the Substantial Completion Date.
- (ii) If, on the Substantial Completion Date, the aggregate amount of Project Co claims for Site Condition Events exceed the initial size of the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any payment whatsoever with respect to the remaining balance of the Site Condition Contingency Fund.
- (iii) For clarity, if, on the Substantial Completion Date, the Site Condition Contingency Fund has been depleted such that there is zero or a negative balance remaining in the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any additional payment whatsoever with respect to the Site Condition Contingency Fund.
- (e) If, prior to the Substantial Completion Date,
- (i) Contracting Authority terminates the Project Agreement for convenience in accordance with Section 38.3; or
- (ii) Project Co terminates the Project Agreement for a Contracting Authority Event of Default in accordance with Section 37.2(a)(ii),

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

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

$$\text{Site Condition Gainshare Amount (Termination)} = ((X * Y) - Z) * \text{[REDACTED]\%}$$

where:

X = Initial Fund Size

Y = % of project completed to date or Cost of Works on date of termination divided by the total Cost of Works

Z = Aggregate Site Condition Event claims on date of termination

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

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

$$\text{Adjusted Site Condition Contingency Fund} = X * Y$$

where:

$$X = \text{Initial Fund Size}$$

$$Y = \% \text{ of project completed to date or Cost of Works on date of termination} \\ \text{divided by the total Cost of Works}$$

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

Sections 32 and 33 of the Project Agreement. For clarity, if the Site Condition Contingency Fund is depleted in full, Project Co shall remain entitled to claim for Compensation Events arising from the events set out in Sections 32.1(a)(v), 32.1(a)(vi), 32.1(a)(vii), 32.1(a)(viii), 32.1(a)(ix) and 32.1(a)(x), subject to and in accordance with the terms of the Project Agreement.

19. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS

19.1 Governmental and Utility Company Fees

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

- (d) The Parties agree that any refund, partial rebate or credit granted by Contracting Authority, MTO, a Municipality, the Region of Peel, any applicable Utility Company, or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Sections 19.1(a), 19.1(b) and 19.1(c) shall be for the benefit of Contracting Authority to the extent such Financial Obligations were paid by Contracting Authority and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co. Without limiting the generality of the foregoing, to the extent that Contracting Authority enters into any cost sharing or cost reduction arrangements with MTO, a Municipality, the Region of Peel, any Utility Company, any Governmental Authority or any third party, Project Co acknowledges and agrees that Contracting Authority shall be the sole beneficiary of any such cost sharing or cost reduction arrangements and Project Co shall have no entitlement whatsoever to any benefit arising from any such cost sharing or cost reduction arrangements.

20. CONTRACTING AUTHORITY ACCESS AND MONITORING

20.1 Contracting Authority Access During the Works

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

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

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

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

20.2 Increased Monitoring

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

20.3 Right to Uncover

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

Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

20.4 No Relief from Obligations

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

20.5 Access by Others

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

- (v) any Province Persons, Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies, MTO, Municipalities, the Region of Peel, and transit systems for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure and Existing Infrastructure owned or operated by such person or in which such person has any interest, provided that, subject to Section 20.5(d), prior to the Substantial Completion Date, and any time after the Substantial Completion Date where Project Co is acting as the “constructor” in accordance with the *Occupational Health and Safety Act* (Ontario), whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works; and
 - (vi) any Province Person to undertake emergency training in relation to the New Metrolinx Infrastructure.
- (b) Subject to Section 20.5(c), Contracting Authority shall require persons accessing Site(s) on the Metrolinx Lands in accordance with access rights under Section 20.5(a) to:
- (i) provide reasonable prior Notice to Project Co appropriate to the circumstances;
 - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.
- (c) Section 20.5(b) shall not apply,
- (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 11.14;
 - (ii) in the case of access rights described in Section 20.5(a) for the purpose of responding to an Emergency;
 - (iii) for the purposes of responding to an emergency declared by Contracting Authority or by a Governmental Authority; and
 - (iv) in a circumstance where the requirements of Section 20.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.
- (d) Notwithstanding Sections 20.5(a)(iii), 20.5(a)(iv), and 20.5(a)(v) or any other provision of the Project Agreement, Project Co shall not be entitled to limit or restrict access to MTO to the MTO Lands, nor shall it be entitled to restrict or limit access to any contractor retained by MTO to perform works or services on the MTO Lands, without the prior written consent of MTO, in its sole and absolute discretion. For certainty, Project Co shall not be entitled to Delay Event or Compensation Event or any other compensation of any kind whatsoever arising from any delay or refusal by MTO to provide such consent.

20.6 Public Use

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

21. ENVIRONMENTAL REQUIREMENTS**21.1 [Intentionally Deleted]****21.2 Environmental Requirements**

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

21.3 [Intentionally Deleted]**22. INDEPENDENT CERTIFIER****22.1 Appointment**

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

22.2 Role of Independent Certifier

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

22.3 Changes to Terms of Appointment

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

22.4 Right to Change Appointment

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

22.5 Cooperation

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

22.6 Payment of Independent Certifier

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

22.7 Replacement

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

appointment shall, unless otherwise agreed by the Parties, be as set out in the Independent Certifier Agreement.

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

23. INTENTIONALLY DELETED

24. INTENTIONALLY DELETED

25. COMMISSIONING AND COMPLETION

25.1 Commissioning Activities

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

25.2 Final Commissioning Program

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect of the Project Co Commissioning and shall provide a copy thereof to the Independent Certifier and the Contracting Authority Representative not less than 180 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall, at a minimum:
- (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
 - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
 - (B) Final Completion on or before the Scheduled Final Completion Date;

- (ii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (iii) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Contracting Authority than those set out in the Outline Commissioning Program, unless otherwise agreed to by Contracting Authority;
 - (iv) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
 - (v) include a schedule of each of the Project Co Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vi) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning; and
 - (vii) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) Contracting Authority shall provide Project Co with comments on the draft Final Commissioning Program in accordance with the procedures contemplated by Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days after receipt of any comments from Contracting Authority.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program with respect to Substantial Completion and Final Completion.

25.3 Commencement of Project Co Commissioning

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

25.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' Notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice (the "**Substantial Completion 10-Day Notice**").
- (b) Project Co shall deliver Notice to the Independent Certifier and the Contracting Authority Representative upon the satisfaction of all of the requirements for Substantial Completion under this Project Agreement (the "**Substantial Completion Notice**"). The Substantial Completion Notice shall (i) describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, (ii) include as appendices all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, and (iii) include Project Co's opinion that the conditions for issuance of the Substantial Completion Certificate under this Project Agreement have been satisfied.
- (c) Within two Business Days of receiving the Substantial Completion Notice from Project Co, the Independent Certifier shall review the Substantial Completion Notice to determine whether or not the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List. For the purposes of this Section 25.4(c), if the Substantial Completion Notice contains a Substantial Completion Deliverable that, in the reasonable opinion of the Independent Certifier, is of such poor quality that it would impede, in a material way, the ability of Contracting Authority and the Independent Certifier to assess whether or not the requirements for Substantial Completion under this Project Agreement have been satisfied, then such Substantial Completion Deliverable shall be deemed to have not been included as part of the Substantial Completion Notice. Following such review and determination by the Independent Certifier and before the expiry of such two Business Day period, the Independent Certifier shall either deliver notice to Project Co and Contracting Authority:
- (i) confirming that the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the "**IC Substantial Completion Deliverables Confirmation**"); or
 - (ii) setting out a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (an "**IC Substantial Completion Deliverables Deficiencies List**").

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

- (d) Contracting Authority shall, within five Business Days after receipt of the IC Substantial Completion Deliverables Confirmation, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Substantial

Completion Certificate have been satisfied or, if applicable, any reasons as to why Contracting Authority considers that the Substantial Completion Certificate should not be issued.

- (e) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 25.4(d), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Minor Deficiencies exist, and to issue to Contracting Authority and to Project Co either:
- (i) the Substantial Completion Certificate confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 25.8; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (f) Where the Independent Certifier has issued a report in accordance with Section 25.4(e)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, and for each subsequent application for Substantial Completion, Project Co shall submit a new Substantial Completion 10-Day Notice and a new Substantial Completion Notice and the process described in Sections 25.4(c) to (f), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.
- (g) In the event that the Substantial Completion Certificate has not been issued within 30 days after the delivery of a Substantial Completion 10-Day Notice or the delivery of a Substantial Completion Notice, such Substantial Completion 10-Day Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new Substantial Completion 10-Day Notice in order to initiate a new application for Substantial Completion.
- (h) For greater certainty, the Independent Certifier's decision to issue the IC Substantial Completion Deliverables Confirmation shall not limit or otherwise affect (i) any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or (ii) the opinion of Contracting Authority or the determination of the Independent Certifier as to whether

the conditions for issuance of the Substantial Completion Certificate have been satisfied pursuant to Section 25.4(d) and Section 25.4(e) respectively.

- (i) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (j) Project Co shall provide As Built Drawings, Record Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than the Substantial Completion Date.
- (k) The submission of the Substantial Completion Notice by Project Co in accordance with Section 25.4(b) shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Project Agreement, arising prior to the submission of the Substantial Completion Notice, except:
 - (i) without prejudice to specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) arising prior to the submission of the Substantial Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

25.5 Operation and Maintenance Manuals

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

25.6 [Intentionally Deleted]

25.7 Countdown Notice and Substantial Completion Deliverables

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

- (c) In accordance with Section 13.5(a), any Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date, without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within 15 Business Days of the Independent Certifier's receipt of the Countdown Notice in accordance with Section 25.7(a), the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority a list of deliverables (the "**Substantial Completion Deliverables List**") that (A) are to be appended to and form part of the Substantial Completion Notice to be submitted by Project Co pursuant to Section 25.4(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion and to support Project Co's opinion that the conditions for issuance of the Substantial Completion Certificate have been satisfied (collectively, the "**Substantial Completion Deliverables**").
- (e) From time to time until the date that is 60 days prior to the Anticipated Substantial Completion Date, the Independent Certifier, in consultation with Project Co and Contracting Authority, may amend the Substantial Completion Deliverables List, including to set out any additional Substantial Completion Deliverables not identified in the Substantial Completion Deliverables List pursuant to Section 25.7(d). Each amended Substantial Completion Deliverables List shall, following its preparation, be deemed to be the Substantial Completion Deliverables List for the purposes of this Project Agreement and be promptly delivered to Project Co and Contracting Authority.
- (f) For greater certainty, nothing in Section 25.7(d) or Section 25.7(e) limits or otherwise affects any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the Substantial Completion Notice pursuant to Section 25.4(b).

25.8 Minor Deficiencies

- (a) In the event that any Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost for Contracting Authority and the time for Project Co, to complete and rectify such Minor Deficiencies. Contracting Authority may withhold from the Substantial Completion Payment a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for Contracting Authority, to complete and rectify all such Minor Deficiencies identified on the Minor Deficiencies List (the "**Completion Holdback**"), which holdback shall be held in an interest bearing account.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. The timeframe for the completion or rectification of each Minor Deficiency shall be no later than six months following the Substantial Completion Date, other than for Minor Deficiencies that are seasonal in nature and cannot be completed within six months following the Substantial Completion Date ("**Seasonal Minor Deficiencies**"). In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to,

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- (i) comply with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, Schedule 15 – Output Specifications; and
 - (ii) minimize, to the greatest extent reasonably possible,
 - (A) any disruption of the Works or restrictions or other impairment of the public’s use and enjoyment of the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof; and
 - (B) any disruption of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works.
 - (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice as soon as reasonably practicable, and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
 - (d) No later than 20 Business Days prior to the Anticipated Final Completion Date, Contracting Authority may direct the Independent Certifier to amend, in consultation with Project Co and Contracting Authority, the Minor Deficiencies List on one occasion to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, the Minor Deficiencies List pursuant to Section 25.8(a). The Independent Certifier shall prepare the amended Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days after such direction given by Contracting Authority. The amended Minor Deficiencies List shall, following its preparation, be deemed to be the Minor Deficiencies List for the purposes of this Project Agreement, including for the purposes of Sections 25.8 to 25.9 inclusive. The amount of the Completion Holdback or the Seasonal Works Holdback, as applicable, shall not be affected by the amended Minor Deficiencies List.
 - (e) Where the Independent Certifier has been directed by Contracting Authority to amend the Minor Deficiencies List pursuant to Section 25.8(d), the Independent Certifier shall specify a completion and rectification time for any newly added Minor Deficiencies that is no greater than 10 Business Days from the date of the issuance of such amended Minor Deficiencies List.
 - (f) Contracting Authority may, in its sole discretion, waive any requirement for Substantial Completion, and the failure to meet any such requirement shall constitute a Minor Deficiency.

25.9 Completion and Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the Contracting Authority Representative and so as to,
 - (i) comply with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement including, for clarity, Schedule 15 – Output Specifications; and

- (ii) minimize, to the greatest extent reasonably possible,
 - (A) any disruption of the Works or restrictions or other impairment of the public's use and enjoyment of the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof; and
 - (B) any disruption of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works; and
- (iii) complete and rectify all Minor Deficiencies:
 - (A) within 45 days after the issuance of the Minor Deficiencies List pursuant to Section 25.8(a) for all Minor Deficiencies other than Seasonal Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier;
 - (B) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List;
 - (C) no later than six months following the Substantial Completion Date for all Minor Deficiencies other than Seasonal Minor Deficiencies; and
 - (D) no later than six months following the Minor Deficiencies Completion Date for all Seasonal Minor Deficiencies.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof and to ensure compliance with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, Schedule 15 – Output Specifications.

25.10 Failure to Rectify Minor Deficiencies

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

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

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

25.11 Final Completion Countdown Notice

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

25.12 Final Completion Certificate

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

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

- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

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

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

25.13 Effect of Certificates/Use

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

25.14 Inspection, Commissioning and Handover of New Municipal Infrastructure

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

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

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

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

New Municipal Infrastructure, as applicable, seek, receive, and document confirmation from the owner of the New Municipal Infrastructure, that such Project Co Commissioning and Handover has been completed.

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

- (ii) any Project Co Commissioning or Handover issue that is unresolved after the expiration of 90 days after Project Co and Contracting Authority, or Project Co and the applicable third party owner (where a Notice of Delegation has been provided), have carried out the joint inspection pursuant to Section 25.14(c) shall be referred to the Independent Certifier for final determination on an expedited basis with such final determination being made no later than the earlier of (A) 60 days from the date of referral; and (B) the Substantial Completion Date.

25A. MILESTONE PAYMENTS

25A.1 Milestone Payment Completion Countdown Notice

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

25A.2 Certification of Milestone Payments

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

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

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

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

26.2 Staff Competency

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

26.3 Notification of Convictions

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

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

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

26.4 Disciplinary Action

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

26.5 Human Resources Policies

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

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

26.6 Management Organizations

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

26.7 Governmental Authority

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

27. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS

27.1 Exercise of Remedial Rights

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

provided that:

- (D) in respect of a breach by Project Co of any obligation under this Project Agreement or any act or omission on the part of Project Co or any Project Co Party which can reasonably be expected to cause any of the consequences set out in Sections 27.1(a)(i)(A) and 27.1(a)(i)(B), Contracting Authority shall not exercise its rights under this Section 27 unless Project Co has failed to cure the relevant breach, act or omission within five Business Days after Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such five Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period

thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 27.1(a)(i)(A) and 27.1(a)(i)(B) actually occur; and

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

27.2 Emergency

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

27.3 Rectification

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

- (b) If Contracting Authority gives Notice to Project Co pursuant to Section 27.3(a) and either:
- (i) Project Co does not either confirm, within five Business Days after such Notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such Notice or present an alternative plan to Contracting Authority to mitigate, rectify and protect against such circumstances that Contracting Authority may accept or reject acting reasonably; or
 - (ii) Project Co fails to take the steps required in such Notice or accepted alternative plan within such time as set out in such Notice or accepted alternative plan or within such longer time as Contracting Authority, acting reasonably, shall think fit,
- then Contracting Authority may take such steps as it considers to be appropriate, acting reasonably, including requiring the termination and replacement of Subcontractors, either themselves or by engaging others (including a third party) to take any such steps.
- (c) Notwithstanding the foregoing provisions of this Section 27.3, in the event of an Emergency, the Notice under Section 27.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and Contracting Authority may, prior to Project Co's confirmation under Section 27.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

27.4 Costs and Expenses

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

27.5 Reimbursement Events

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

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

27.6 Reimbursement if Improper Exercise of Rights

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

28. RECORDS, INFORMATION AND AUDIT

28.1 Records Provisions

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

28.2 Information and General Audit Rights

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

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

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

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

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

28.3 Lenders' Consultant Reports

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

29. COMMUNICATIONS

29.1 Communications

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

30. CHANGES IN LAW

30.1 Performance after Change in Law

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

30.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
 - (i) either Party may give Notice to the other of the need for a Variation as a result of such Works Change in Law;

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

30.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 30.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give Notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days after such Notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days after this meeting, reached an agreement, either Party may

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

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

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

- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 32 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 30.3, and Section 33 shall be construed accordingly.

30.4 Pandemic and Epidemic Change in Law

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

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

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

31. VARIATIONS

31.1 Variation Procedure

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

Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations.

31.2 Innovation and Value Engineering

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

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

32. DELAY EVENTS

32.1 Definition

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

- a Dispute, to the extent that the Dispute is subsequently determined in Project Co's favour;
- (xiii) subject to and in accordance with Section 11.9, MTO's failure to issue to Project Co an MTO Encroachment Permit on or before the applicable MTO Encroachment Permit Deadline;
 - (xiv) subject to and in accordance with Section 11.10, an Issuing Authority's failure to issue to Project Co a Listed Project Co PLAA on or before the applicable Listed Project Co PLAA Deadline;
 - (xv) a stop work order issued by MTO in respect of an MTO Encroachment Permit, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of Project Co or a Project Co Party or as a result of a breach by Project Co or a Project Co Party of its or their respective obligations under such MTO Encroachment Permit or under the Project Agreement;
 - (xvi) any change to the terms, conditions or requirements of the Environmental Assessments, except, in each case, to the extent resulting from any change by Project Co in the design of the Project or from any other act or omission on the part of Project Co;
 - (xvii) a Relief Event;
 - (xviii) an event of Force Majeure;
 - (xix) a Relevant Change in Law;
 - (xx) a TBM Marine Event, pursuant to Section 11.33(b);
 - (xxi) a Pandemic and Epidemic Change in Law;
 - (xxii) subject to and in accordance with Section 11.35(c), a failure of THES to execute and deliver a completed Utility Agreement in the Form of THES Utility Agreement or in a form otherwise agreed to between Project Co and THES;
 - (xxiii) subject to compliance by Project Co with the provisions of Section 11.21, a failure by Contracting Authority to complete or to cause the completion of the Utility Preparatory Activities on or before the dates set out in Sections 3.14.6.4(k)(iv)D, 3.14.6.4(k)(v)C, 3.14.6.4(k)(vi)B, 3.14.6.4(k)(vii)B, and 3.14.6.4(k)(viii)C of the Output Specifications, subject to and in accordance with the terms and conditions of Section 3.14.6.4(k) of the Output Specifications;
 - (xxiv) a stop work order issued by a Governmental Authority in respect of the New Metrolinx Infrastructure, the New Third Party Infrastructure or the Works, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of Project Co or a Project Co Party; or
 - (xxv) a Protest Action, subject to and in accordance with Section 11.15(e).

32.2 Consequences of a Delay Event

- (a) Project Co shall provide written Notice to the Contracting Authority Representative and the Independent Certifier within five Business Days after becoming aware of the occurrence of any event or circumstances described in Section 32.1(a)(ii), Section 32.1(a)(iii), Section 32.1(a)(iv), Section 32.1(a)(v), Section 32.1(a)(vi), Section 32.1(a)(vii), Section 32.1(a)(viii), Section 32.1(a)(ix), Section 32.1(a)(x), Section 32.1(a)(xi), Section 32.1(a)(xiii), Section 32.1(a)(xiv), Section 32.1(a)(xv), Section 32.1(a)(xvi), Section 32.1(a)(xxi), Section 32.1(a)(xxii), Section 32.1(a)(xxiii), Section 32.1(a)(xxiv) or Section 32.1(a)(xxv) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 32.2(e) as a Delay Event.
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 32.2(a), provide further written details to the Contracting Authority Representative and the Independent Certifier which shall include:
- (i) identification of the category of Delay Event on which Project Co's future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
 - (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 32.2(a);
 - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 32.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date or Scheduled Final Completion Date if such event or circumstances forms the basis of a future claim by Project Co for relief as a Delay Event;
 - (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event; and
 - (vi) in respect of the circumstances described in Section 32.1(a)(v) or Section 32.1(a)(vi), such additional information as may be required by Schedule 37 – Geotechnical Baseline Report.
- (c) As soon as possible but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 32.2(a), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.
- (d) The Contracting Authority Representative shall, after receipt of written details under Section 32.2(b), or of further particulars under Section 32.2(c), be entitled by written Notice to require

Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative and the Independent Certifier reasonable facilities for their investigations, including on-site inspection.

- (e) In addition to complying with its obligations under Sections 32.2(a) and 32.2(b), Project Co shall provide written Notice to the Contracting Authority Representative and the Independent Certifier within five Business Days after becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of a Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details of the Delay Event to the Contracting Authority Representative and the Independent Certifier, including, if and as applicable, to substitute or supplement the information given in Sections 32.2(a), 32.2(b) and 32.2(c), to substantiate or support Project Co's claim which shall include, to the extent not previously provided:
- (i) a statement of which Delay Event upon which the claim is based;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, including a critical path analysis of the event or circumstances, indicating the impact upon the Scheduled Substantial Completion Date or Scheduled Final Completion Date; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (f) As soon as possible, but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 32.2(e), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.
- (g) The Contracting Authority Representative shall, after receipt of written details under Section 32.2(e), or of further particulars under Section 32.2(f), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (h) Subject to the provisions of this Section 32, the Contracting Authority Representative shall allow Project Co an extension of time equal to the delay to the Scheduled Substantial Completion Date or Final Completion Date caused by the Delay Event and shall fix (A) a revised Scheduled Substantial Completion Date, or (B) a revised Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days following the later of:

- (i) the date of receipt by the Contracting Authority Representative of Project Co's Notice given in accordance with Section 32.2(e) and the date of receipt of adequate further particulars (if such are required under Section 32.2(f)), whichever is later; and
 - (ii) the date of receipt by the Contracting Authority Representative of any supplemental information supplied by Project Co or requested by Contracting Authority in accordance with Section 32.2(f) and the date of receipt of any further particulars (if such are required under Section 32.2(g)), whichever is later.
- (i) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (j) If:
 - (i) the Contracting Authority Representative declines to fix (A) a revised Scheduled Substantial Completion Date; or (B) a revised Scheduled Final Completion Date, as applicable;
 - (ii) Project Co considers that a different (A) Scheduled Substantial Completion Date, or (B) Scheduled Final Completion Date should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,then Project Co shall be entitled to refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (k) Subject to Project Co meeting the obligations set out in Section 32.2 and Section 32.3,
 - (i) if a Municipal Lane Closure is directly caused or extended by one or more of the events set out in Section 32.1(a), whether or not such event constitutes a Delay Event, such Municipal Lane Closure or extension thereof shall not be included in the Aggregate Actual Lane Closures or the Aggregate Actual Lane Closures Cost for the relevant Road Section for the purposes of calculating the Lane Closure Adjustment in accordance with the process set out in Schedule 36 – Mobility Matters; and
 - (ii) for clarity, Section 32.2(k)(i) shall apply only to the extent that a Municipal Lane Closure was not contemplated by the Aggregate Target Lane Closures and not merely because a Municipal Lane Closure has been deferred.
- (l) To the extent that Project Co does not comply with its obligations under Sections 32.2(a), (b), (c), (d), (e), (f) or (g), and subject to Section 32.2(m), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 32.
- (m) If Project Co does not provide further written details to the Contracting Authority Representative and the Independent Certifier as required under Section 32.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and Contracting Authority shall not be obligated to consider, the Notice given under Section 32.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 32.

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

32.3 Mitigation

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

- (b) To the extent that Project Co does not comply with its obligations under this Section 32.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 32.

33. COMPENSATION EVENTS

33.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 32.1(a)(ii), 32.1(a)(iii), 32.1(a)(iv) (subject to Section 32.2(p)), 32.1(a)(v), 32.1(a)(vi), 32.1(a)(vii), 32.1(a)(viii), 32.1(a)(ix), 32.1(a)(x), 32.1(a)(xi), 32.1(a)(xii), 32.1(a)(xiii), 32.1(a)(xiv), 32.1(a)(xv), 32.1(a)(xvi), 32.1(a)(xxii), 32.1(a)(xxiii) or 32.1(a)(xxiv) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

33.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 33. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
- (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 32.1(a)(i);
 - (ii) Section 35, in the case of a Delay Event referred to in Section 32.1(a)(xviii);
 - (iii) Section 34, in the case of a Delay Event referred to in Section 32.1(a)(xvii);
 - (iv) Section 30, in the case of a Delay Event referred to in Section 32.1(a)(xix);
 - (v) Section 30.4, in the case of a Delay Event referred to in Section 32.1(a)(xxi); and
 - (vi) Section 11.15(e)(iv), in the case of a Delay Event referred to in Section 32.1(a)(xxv).
- (b) Subject to Sections 33.2(c), 33.3 and 33.4, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by Contracting Authority to Project Co. Project Co shall promptly provide the Contracting Authority Representative with any information the Contracting Authority Representative may require in order to determine the amount of such compensation.
- (c) If Contracting Authority is required to compensate Project Co pursuant to this Section 33.2, then Contracting Authority may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably.

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

33.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 33 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 33.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 33.

33.4 Insured Exposure

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

33.5 [Intentionally Deleted]**34. RELIEF EVENTS****34.1 Definition**

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

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

- (iii) accidental loss or damage to the Works and/or the New Metrolinx Infrastructure or any roads servicing the Lands;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;

- (v) blockade or embargo that is not a Protest Action and that falls short of a Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the New Metrolinx Infrastructure, the New Third Party Infrastructure or construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) the occurrence of a Pandemic and Epidemic Supply Chain Delay,

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

34.2 Consequences of a Relief Event

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

34.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 34.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 34.
- (c) The Party claiming relief shall give written Notice to the other Party within five Business Days after such Party becoming aware of the relevant Relief Event. Such initial Notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 34.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any Notice referred to in Section 34.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

34.4 Insured Exposure

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

35. FORCE MAJEURE

35.1 Definition

- (a) For the purposes of this Project Agreement, "**Force Majeure**" means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;

- (ii) nuclear or radioactive contamination of the Works, the New Metrolinx Infrastructure and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;
- (iii) chemical or biological contamination of the Works, the New Metrolinx Infrastructure and/or the Lands from any event referred to in Section 35.1(a)(i);
- (iv) pressure waves caused by devices traveling at supersonic speeds; or
- (v) the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

35.2 Consequences of Force Majeure

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

35.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon

the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform, including efforts to minimize any negative impact of the event of Force Majeure on the Project Works Schedules.

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 35.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 35.
- (c) The Party claiming relief shall give written Notice to the other Party within five Business Days after such Party becoming aware of the relevant event of Force Majeure. Such initial Notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 35.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any Notice referred to in Section 35.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

35.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 35 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

35.5 Modifications

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

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

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

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

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

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

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

36.2 Notification of Occurrence

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

36.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after Contracting Authority becomes aware of a Project Co Event of Default, Contracting Authority may, subject to Section 36.4, terminate this Project Agreement in its entirety by written Notice having immediate effect, prior to and without the need to obtain confirmation through Schedule 27 – Dispute Resolution Procedure, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice. The Parties agree that no irreparable harm shall occur if this Project Agreement is terminated and that any termination of the Project Agreement by either Party, if found to be wrongful, would be adequately compensated for by an award of damages.

36.4 Remedy Provisions

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

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

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

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

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

36.5 Contracting Authority Costs

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

36.6 No Other Rights to Terminate

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

37. CONTRACTING AUTHORITY DEFAULT

37.1 Contracting Authority Events of Default

- (a) For the purposes of this Project Agreement, “**Contracting Authority Event of Default**” means any one or more of the following events or circumstances:
- (i) Contracting Authority failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set-off by Contracting Authority pursuant to Section 4.11(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
- (A) in respect of the Substantial Completion Payment or Legislative Holdback, such failure continues for a period of 10 Business Days;
- (B) in respect of the First Milestone Payment, Second Milestone Payment or Third Milestone Payment, such failure continues for a period of 30 days; or
- (C) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for a period of 90 days,
- in any such case, from receipt by Contracting Authority of a Notice of non-payment from or on behalf of Project Co;
- (ii) Contracting Authority committing a material breach of its obligations under Section 16 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform all or substantially all of its remaining Works obligations under this Project

Agreement for a continuous period of not less than 60 days, and after receipt of a Notice of such breach from Project Co, Contracting Authority failing to remedy such breach in accordance with all of the following:

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

37.2 Project Co’s Options

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

37.3 Project Co's Costs

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

37.4 No Other Rights to Terminate

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

38. RELIEF EVENT AND NON DEFAULT TERMINATION**38.1 Termination for Relief Event**

- (a) If a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives Notice to the other Party pursuant to Section 34.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing all or substantially all of its obligations under this Project Agreement.

38.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 35.5 within 180 days after the date on which the Party affected gives Notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing all or substantially all of its obligations under this Project Agreement.

38.3 Termination for Convenience

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

38.4 Termination for Site Condition Event

- (a) If a Site Condition Event occurs which entitles Project Co to Delay Event relief pursuant to Section 32, and the effects of the Site Condition Event continue for 180 days from the date on

which either Party becomes aware of such event, Contracting Authority may, at any time thereafter, terminate this Project Agreement by written Notice to Project Co having immediate effect, provided that the effects of the Site Condition Event continue during such period to prevent either Party from performing a material part of its obligations under the Project Agreement.

38.5 Automatic Expiry on Expiry Date

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

38.6 Termination due to Protest Action

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

39. EFFECT OF TERMINATION

39.1 Termination

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a Notice of termination or termination on the Expiry Date pursuant to Section 38.5, this Section 39 shall apply in respect of such termination.

39.2 Continued Effect – No Waiver

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

39.3 Continuing Performance

- (a) Subject to any exercise by Contracting Authority of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 39.

39.4 Effect of Notice of Termination

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

as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of the Design and Construction Contract with the Construction Contractor shall be made by Contracting Authority pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;

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

39.5 Ownership of Information

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

39.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make

such provision) to ensure that Contracting Authority shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 39.

39.7 Transitional Arrangements

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

39.8 Termination upon Aforesaid Transfer

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

39.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 3.2(g), 4.11, 4.12, 4.14, 6, 7, 8, 11.18, 11.19, 11.20, 17.2, 18.1, 18.2(b), 18.3(f), 18.4(d), 18.5(c), 18.6(c), 18.7(c), 22.6, 25.13, 27, 28, 36.5, 37.3, 38.4, 38.5, 39, 40, 41 (with the exception of 41.4(b)), 42, 43, 44.3, 45, 46, 47, 48, 50.3, 51.1, 54.4, 54.8, 54.9, 54.10, 54.11, 54.12 of this Project Agreement, Schedule 7 – Warranty Letter of Credit, Schedule 14 – Outline Commissioning Program and Handover, Schedule 21 – Liquidated Damages and Construction Enforcement Regime, Schedule 23 – Compensation on Termination, Schedule 32 – Financial Model, Sections 1.2 – 1.8 of

Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Sections 2.1 – 2.6 and 3.2 – 3.9 of Schedule 24 – Intellectual Property, Schedule 36 – Mobility Matters, and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 38.5. For clarity, any termination of this Project Agreement shall be without prejudice to, and shall not affect, the Performance Guarantee of Construction Guarantors, which shall survive the termination of this Project Agreement, including termination on the Expiry Date pursuant to Section 38.5, in respect of any and all of such surviving provisions of the Project Agreement.

40. COMPENSATION ON TERMINATION

40.1 Compensation on Termination

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

40.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 40.2(b), any compensation paid pursuant to this Section 40, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Contracting Authority shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 40.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set-off pursuant to Section 4.11 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 39.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date.

41. INTELLECTUAL PROPERTY

41.1 Ownership of Intellectual Property

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

41.2 Licenses to Intellectual Property

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

41.3 Representation and Warranty

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

41.4 Jointly Developed Materials

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

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

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

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

41.5 Maintenance of Data

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

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

41.6 Contracting Authority Trade-Marks

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

41.7 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 41 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

41.8 Government Use of Documents

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

41.9 Restrictions

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

42. CONFIDENTIALITY**42.1 Disclosure**

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

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

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

42.2 Redaction

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

42.3 Disclosure to Government

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

42.4 Freedom of Information and Protection of Privacy Acts

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

42.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 42 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
- (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee or agent of the Lenders and the Lenders' Agent, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Works or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that Contracting Authority may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. Contracting Authority will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.

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

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

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

42.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;

- (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
- (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to Contracting Authority upon a termination of this Project Agreement, pursuant to Section 38 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Works, including the design or construction of the New Metrolinx Infrastructure, or any other operations or services the same as, or similar to, the Works; or
- (ix) the information would not be exempt from disclosure under FIPPA.

42.7 Survival of Confidentiality

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

42.8 Confidentiality of Intellectual Property

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

43. PERSONAL INFORMATION

43.1 General

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

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

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

43.2 Protection of Personal Information

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

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

43.3 Personal Information

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 43 and any other provision of the Project Agreement, this Section 43 shall prevail.
- (c) The obligations in this Section 43.3 shall survive the termination of this Project Agreement.

44. INSURANCE AND PERFORMANCE SECURITY

44.1 General Requirements

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

44.2 No Relief from Liabilities and Obligations

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

44.3 Performance Guarantee of Construction Guarantors

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

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

45. TITLE

45.1 Title

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

46. INDEMNITIES

46.1 Project Co Indemnities to Contracting Authority

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

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

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

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

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

46.2 Contracting Authority Indemnities to Project Co

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

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

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

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

46.3 Conduct of Claims

- (a) This Section 46.3 shall apply to the conduct of claims, made by a third person against a Party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any Notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 46, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days after receipt of the same. Such Notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 46.3(d), 46.3(e) and 46.3(f), on the giving of such Notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the

Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.

- (d) With respect to any claim conducted by the Indemnifier:
- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 46.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 46.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days following the Indemnifier's receipt of the Notice from the Beneficiary under Section 46.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 46.3(d).
- (f) The Beneficiary shall be free at any time to give Notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 46.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such Notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the

Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any Notice pursuant to this Section 46.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.

- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 46.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

46.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 54.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

47. LIMITS ON LIABILITY

47.1 Indirect Losses

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

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

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

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

47.2 No Liability in Tort

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

47.3 Sole Remedy

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

- (ii) the liquidated damages paid by Project Co pursuant to Section 3 of Schedule 21 – Liquidated Damages and Construction Enforcement Regime shall be Contracting Authority’s sole remedy for MTO Lane Closure Costs in respect of MTO Lane Closures which occur at a time other than the Permitted Periods for Closure (including, for clarity, when there is a MTO Lane Closure earlier than the Permitted Periods for Closure and including when Project Co fails to re-open lanes or ramps within the Permitted Periods for Closures), but shall not be Contracting Authority’s sole remedy with respect to amounts that are not MTO Lane Closure Costs;
- (iii) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 36 – Mobility Matters shall not be Contracting Authority’s sole remedy with respect to exceedances in Municipal Lane Closures, which exceedances are contemplated in Schedule 36 – Mobility Matters;
- (iv) the liquidated damages paid by Project Co pursuant to Section 4 of Schedule 21 – Liquidated Damages and Construction Enforcement Regime shall be the sole remedy of Contracting Authority and Province Persons for Specified Costs that may be claimed by Contracting Authority and Province Persons as a result of Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date, but shall not be Contracting Authority’s sole remedy with respect to amounts that are not Specified Costs in connection with Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date; and
- (v) the amounts deducted from the Substantial Completion Payment pursuant to Section 5 of Schedule 21 – Liquidated Damages and Construction Enforcement Regime shall not be Contracting Authority’s sole remedy in respect of Project Co’s failure to perform its obligations in accordance with the Project Agreement.

47.4 Maximum Liability

- (a) Subject to Section 47.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 46 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co’s maximum aggregate liability in respect of all claims under Section 46.1(a)(i) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 47.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

- (d) For clarity, nothing in this Section 47.4 shall restrict or limit, or establish any maximum liability, in respect of any amount payable, by Project Co to Contracting Authority, as the Lane Closure Adjustments pursuant to Schedule 36 – Mobility Matters.

48. DISPUTE RESOLUTION PROCEDURE

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

49. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

49.1 Project Co Assignment

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

49.2 Contracting Authority Assignment

- (a) Contracting Authority may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties:
- (i) to the Province;
 - (ii) as may be required to comply with Applicable Law;
 - (iii) to any minister of the Province;
 - (iv) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Contracting Authority under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of Contracting Authority's obligations hereunder and under the other Project Documents to which Contracting Authority is a party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 49.2(a)(i) to 49.2(a)(iv) with the prior written consent of Project Co; provided that the person to whom any such

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

- (b) Contracting Authority shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of their interest in this Project Agreement in accordance with this Section 49.2.

49.3 Subcontracting

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

49.4 Changes in Ownership and Control

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

integrity, or (B) the nature of the public transit system in any one or more of the Municipalities, the Region of Peel or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the Municipalities, the Region of Peel or the Province of Ontario or the Project; or

- (ii) if such Change in Ownership would have a material adverse effect on the performance of the Works or the Governmental Activities.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, Contracting Authority may:
- (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
 - (ii) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Contracting Authority's, in its discretion.
- (d) Project Co shall provide Notice to Contracting Authority of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within five Business Days after such Change in Ownership, and such Notice shall include a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership.
- (e) Subject to Sections 49.4(a), 49.4(b), 49.4(c) and 49.4(d), no Change in Control of Project Co, or of any Control Party, shall be permitted without the prior written consent of Contracting Authority.
- (f) Project Co shall provide Notice to Contracting Authority of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such Notice shall include:
- (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control; and
 - (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control.

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

- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in any one or more of the Municipalities, the Region of Peel or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the Municipalities, the Region of Peel or the Province of Ontario or the Project.
- (h) Notwithstanding the definition of "Control Parties" set out Schedule 1 – Definitions and Interpretation, this Section 49.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange
- (i) Section 49.4(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the "**Relevant Entity**") owned by an employee of such Relevant Entity, unless such changes individually or in the aggregate determined since the date of this Project Agreement, would result in a Change in Control of Project Co, in which case Section 49.4(f) shall apply.

49.5 Contracting Authority's Due Diligence

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

50. PROHIBITED ACTS

50.1 Definition

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

provided that this Section 50.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill

or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Contracting Authority, provided that this Section 50.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Contracting Authority or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project without contravening the intent of this Section 50;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud Contracting Authority or any other public body.

50.2 Remedies

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

- (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give Notice to Project Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Works shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 50.2(a)(i) to 50.2(a)(iv), then Contracting Authority may give Notice to Project Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Works shall be performed by another person.
- (b) Any Notice of termination under this Section 50.2 shall specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom Contracting Authority believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 50.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 50.

50.3 Permitted Payments

- (a) Nothing contained in this Section 50 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

50.4 Notification

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

50.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 50, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

51. NOTICES**51.1 Notices to Parties**

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

If to Project Co:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

with a copy to:

Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

with a copy to:

Email: [REDACTED]

with a copy to:

[REDACTED]

Attention: [REDACTED]

Email: [REDACTED]

If to IO:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

with a copy to:

Email: [REDACTED]

with a copy to:

[REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

with a copy to:

[REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

If to Metrolinx

[REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

with a copy to:

[REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

with a copy to:

[REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

with a copy to:
Email: [REDACTED]

51.2 Notices to Representatives

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

If to Project Co Representative: [REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

If to the Contracting Authority Representative: [REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

with a copy to:
[REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

with a copy to:
Email: [REDACTED]

with a copy to:
[REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

51.3 Electronic Submission

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

51.4 Change of Contact Information

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 51.1 or 51.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

51.5 Deemed Receipt of Notices

- (a) Subject to Sections 51.5(b), 51.5(c) and 51.5(d):

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

51.6 Service on Contracting Authority

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

52. EMERGENCY MATTERS

52.1 Emergency

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

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

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

54. GENERAL**54.1 Amendments**

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

54.2 Waiver

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

54.3 Relationship Between the Parties

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

54.4 General Duty to Mitigate

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

54.5 Actual Knowledge

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

54.6 Entire Agreement

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

54.7 No Reliance

- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
 - (ii) this Section 54.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

54.8 Severability

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

54.9 Enurement

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

54.10 Governing Law and Jurisdiction

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

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

54.11 Cumulative Remedies

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

54.12 Further Assurance

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

54.13 Costs

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

54.14 Language of Agreement

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

54.15 Proof of Authority

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

54.16 Counterparts

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

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

54.17 Province Persons and Contracting Authority Parties as Third Party Beneficiaries

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

54.18 Time is of the Essence

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

54.19 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

**WESTEND CONNECTORS DEVELOPER
GENERAL PARTNERSHIP[REDACTED]**

[REDACTED]

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

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