

# **PROJECT AGREEMENT**

## **DRIVER EXAMINATION SERVICES**

**CONFIDENTIAL – ECONOMIC INTERESTS OF ONTARIO**

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## SCHEDULES

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Custody Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- DE Service Provider's Direct Agreement
Schedule 6	- [INTENTIONALLY DELETED]
Schedule 7	- Service Delivery Points
Schedule 8	- [INTENTIONALLY DELETED]
Schedule 9	- Key Individuals
Schedule 10	- Form of Lease and Licensing Agreement
Schedule 11	- Quality Management
Schedule 12	- Key Performance Indicators
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Reporting Obligations
Schedule 15	- DE Output Specifications
Schedule 16	- IT Output Specifications
Schedule 17	- Employees and Training
Schedule 18	- Communications Protocol
Schedule 19	- Customer Satisfaction Surveys
Schedule 20	- Payment Mechanism
Schedule 21	- [INTENTIONALLY DELETED]
Schedule 22	- Variation Procedure

Schedule 23	-	Compensation on Termination
Schedule 24	-	Transition Procedures
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Standby Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	<b>[REDACTED]</b>
Schedule 33	-	Security Statement
Schedule 34	-	Notifiable Incidents
Schedule 35	-	Fee Collection
Schedule 36	-	Business Integrity and Fraud Management
Schedule 37	-	Performance Letter of Credit

**THIS PROJECT AGREEMENT** is made as of the 27<sup>th</sup> day of June, 2013

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the  
Minister of Transportation

**AND:**

[REDACTED]

("Project Co")

**WHEREAS:**

- A. HMQ wishes to grant to a third party the right to deliver and provide the DE Services.
- B. Project Co will provide the Project Operations, which Project Operations include the performance of the DE Services (the "**Project**").
- C. HMQ and Project Co wish to enter into this project agreement (the "**Project Agreement**"), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. HMQ has the right to grant to Project Co the authority to perform and conduct the Project Operations as provided in this Project Agreement pursuant to section 2(1) of the *Improving Customer Service for Road Users Act*, S.O. 2001, c 18.
- E. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that HMQ and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions and Interpretation**

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

Schedule No.	Description
Schedule 1	- Definitions and Interpretation

Schedule 2	-	Completion Documents
Schedule 3	-	Custody Agreement
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	DE Service Provider's Direct Agreement
Schedule 6	-	<b>[INTENTIONALLY DELETED]</b>
Schedule 7	-	Service Delivery Points
Schedule 8	-	<b>[INTENTIONALLY DELETED]</b>
Schedule 9	-	Key Individuals
Schedule 10	-	Form of Lease and Licensing Agreement
Schedule 11	-	Quality Management
Schedule 12	-	Key Performance Indicators
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Reporting Obligations
Schedule 15	-	DE Output Specifications
Schedule 16	-	IT Output Specifications
Schedule 17	-	Employees and Training
Schedule 18	-	Communications Protocol
Schedule 19	-	Customer Satisfaction Surveys
Schedule 20	-	Payment Mechanism
Schedule 21	-	<b>[INTENTIONALLY DELETED]</b>
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Transition Procedures
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Standby Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model Extracts
Schedule 33	-	Security Statement
Schedule 34	-	Notifiable Incidents
Schedule 35	-	Fee Collection
Schedule 36	-	Business Integrity and Fraud Management
Schedule 37	-	Performance Letter of Credit

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.

- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, HMQ or anyone else (including anyone pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval, determination or satisfaction is in the sole discretion of HMQ, no consent, approval, determination or satisfaction of HMQ or the HMQ Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval, determination or satisfaction is in the sole discretion of Project Co, no consent, approval, determination or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

## **1.2 Conflict of Terms**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
  - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 Definitions and Interpretation;
  - (v) Schedule 27 Dispute Resolution Procedure;
  - (vi) Schedule 20 Payment Mechanism
  - (vii) Schedule 35 Fee Collection
  - (viii) Schedule 14 Reporting Obligations
  - (ix) Schedule 15 DE Output Specifications;
  - (x) Schedule 16 IT Output Specifications;

- (xi) Schedule 25 Insurance and Performance Security Requirements;
  - (xii) Schedule 22 Variation Procedure;
  - (xiii) Schedule 11 Quality Management;
  - (xiv) Schedule 28 Refinancing;
  - (xv) Schedule 23 Compensation on Termination;
  - (xvi) Schedule 26 Record Provisions;
  - (xvii) Schedule 24 Transition Procedures;
  - (xviii) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xix) Schedule 13 Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or HMQ, upon discovery of same, shall immediately give notice to the HMQ Representative. The HMQ Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) HMQ and Project Co shall comply with the determination of the HMQ Representative pursuant to this Section 1.2 unless HMQ or Project Co disputes the decision of the HMQ Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

### **1.3 Conflict of Documents**

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

### **1.4 Obligations Under Third Party Contracts**

- (a) To the extent that Project Co is unable to satisfy its obligations under any one or more of Sections 11.2(b)(ii), 32.3(b), 37.2(b) to (d), 37.2(f), 39.1(c) of the Project Agreement or Section 9.1 of Schedule 25 – Insurance and Performance Security Requirements in respect of any Third Party Contracts that constitute a lease, sublease, right of occupancy or similar occupancy arrangement

in respect of any Service Delivery Point solely because Project Co, or the applicable Project Co Party, as the case may be, does not have the contractual right under the terms of such Third Party Contract to cause the other party thereto to provide information or take such actions thereunder as may be required by HMQ under, or pursuant to, any one or more of Sections 11.2(b)(ii), 32.3(b), 37.2(b) to (d), 37.2(f), 39.1(c) of the Project Agreement or Section 9.1 of Schedule 25 – Insurance and Performance Security Requirements, then Project Co shall not be deemed to be in default of such obligations for the purposes of the Project Agreement to the extent it cannot cause the other party to such Third Party Contract to comply with the obligations of Project Co or the applicable Project Co Party as may be set out in such sections of the Project Agreement.

## **2. COMMERCIAL CLOSE AND FINANCIAL CLOSE**

### **2.1 Effective Date**

- (a) The provisions of Sections 1 to 11, 13, 17, 19, 21, 28, 37 to 39 and 51 to 64, and Schedules 1 to 3, 7, 8, 9, 11, 13, 18, 22, 25 to 27 and 29 will come into effect on Commercial Close. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

### **2.2 Standby Letter of Credit**

- (a) On Commercial Close, Project Co shall deliver, or cause to be delivered, to HMQ an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of \$[REDACTED] substantially in the form of Schedule 29 – Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by HMQ in accordance with the provisions of this Project Agreement, HMQ shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

### **2.3 Financial Close**

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to HMQ drafts of all documents referred to in Section 1 of Schedule 2 – Completion Documents.
- (b) No later than the Financial Close Target Date:
  - (i) Project Co shall:
    - (A) pay the Up-Front Concession Payment to HMQ pursuant to and in accordance with Section 4.5;

- (B) deliver to HMQ the documents referred to in Section 1 of Schedule 2 – Completion Documents; and
  - (ii) HMQ shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 – Completion Documents.
- (c) If Project Co:
  - (i) fails to pay the Up-Front Concession Payment to HMQ by the Financial Close Target Date; or
  - (ii) fails to deliver to HMQ any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by HMQ of its obligations under Section 2.3(b)(ii));

and, in either case, HMQ does not waive such requirement, HMQ will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.

- (d) If HMQ fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit, to terminate this Project Agreement in its entirety by written notice having immediate effect and neither HMQ nor Project Co shall be liable to the other for any damages, costs or losses resulting from such termination of this Project Agreement or for any expenses or costs incurred prior to or after the date of such termination of this Project Agreement whatsoever or howsoever incurred, or related, directly or indirectly, to the Request for Proposals.

## 2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, HMQ may in its sole discretion either:



- (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
- (ii) direct Project Co to assign to HMQ and HMQ will assume:
  - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences and Approvals; and
  - (B) those contracts between Project Co and any Project Co Party which HMQ elects to be assigned.
- (c) If HMQ exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii) above, Project Co will be entitled to the return of its Standby Letter of Credit. HMQ's obligation to return the Standby Letter of Credit shall be contingent on the receipt of a waiver, in form and substance satisfactory to HMQ, that such fee represents full and final satisfaction of any obligation or liability of HMQ to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

### **3. SCOPE OF AGREEMENT**

#### **3.1 Scope of Agreement**

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

### **4. GRANT**

#### **4.1 Term**

- (a) The term of the Grant shall commence on Commencement Date and shall expire on the Expiry Date, unless the Grant is sooner terminated in accordance with this Agreement.

#### **4.2 Grant of Authority**

- (a) Subject to the provisions of this Project Agreement, HMQ grants to Project Co, effective on the Commencement Date, the authority to perform and conduct the Project Operations in accordance with this Project Agreement. For the purposes of the performance of the Project Operations by Project Co, HMQ delegates to Project Co the powers, duties and responsibilities set out in:
  - (i) subsection 32(5)(c);

- (ii) paragraph 32(5)(a); and
- (iii) subparagraph 32(5)(b)(i),  
of the *Highway Traffic Act* (Ontario);
- (iv) subsection 24(1);
- (v) subsection 24(2);
- (vi) subsection 24(4);
- (vii) subsection 30(1),  
of Ontario Regulation 340/94 made under the *Highway Traffic Act* (Ontario); and
- (viii) section 1.1(a) of Schedule 35 – Fee Collection,

and grants to Project Co the authority and a licence to exercise such powers, perform such duties and discharge such responsibilities (such grant and the grant in the first paragraph of Section 4.1, collectively, the “**Grant**”), and Project Co accepts the Grant.

#### 4.3 Exclusivity and Limits of Grant Exclusivity

- (a) Subject to the provisions of this Project Agreement, HMQ shall not, at any time during the Operational Term, perform or authorize any third party to perform, any Project Operations.
- (b) Despite Section 4.3(a), nothing in this Project Agreement shall restrict HMQ from:
  - (i) authorizing or continuing the authorization of any person to perform any services that are not:
    - (A) services for which Project Co would have the right to charge a fee pursuant to Section 34; or
    - (B) services which form part of the DE Services, except as expressly contemplated by this Section 4.3;
  - (ii) continuing the authorization of third parties who are Recognized Authorities at the Commencement Date or authorizing third parties to be Recognized Authorities;
  - (iii) continuing to:
    - (A) administer (or authorizing another person to administer) driver examination services, for an individual requesting or presenting himself or herself to the driver and vehicle licensing office situated on the Commencement Date at 777

Bay Street, Toronto, Ontario (or any substitute location), including vision and knowledge tests (but excluding road tests or air brake endorsement practical tests), that are required to obtain, renew, maintain, upgrade or reinstate a Driver's Licence of any Class at that office and related services, products and transactions; and

- (B) offer (or authorize another person to offer) any of the services delivered by ServiceOntario at 777 Bay Street in Toronto, Ontario (or any substitute location);
- (iv) authorizing or continuing the authorization of community colleges to provide testing for all Classes of Drivers' Licences (other than Class G, G1 and G2) and for air brake endorsements;
- (v) administering knowledge and vision tests in association with group education services for drivers aged 80 and over that are required to renew, maintain or reinstate a Driver's Licence of any Class and providing road tests for such drivers aged 80 and over who are identified by HMQ as requiring road tests to renew, maintain or reinstate a Class D, G or M Driver's Licence;
- (vi) administering road tests for drivers referred for road tests as a result of an interview before a Province Person; or
- (vii) offering for sale, directly or through third parties, or permitting third parties to sell, driver handbooks, including The Official Air Brake Handbook, The Official Bus Handbook, The Official Driver's Handbook, The Official Motorcycle Handbook and The Official Truck Handbook.

#### 4.4 Provision of Additional Services

- (a) HMQ may, in its sole discretion, from time to time offer to grant to Project Co the authority to perform and conduct any services that are provided to the public by HMQ or any person authorized by HMQ and Project Co shall use commercially reasonable efforts to respond on a timely basis to any such offer so made by HMQ.

#### 4.5 Up-Front Concession Payment

- (a) As consideration for the Grant Project Co shall pay to or to the order of HMQ the sum of \$[REDACTED] (the "Up-Front Concession Payment") on Financial Close. The Up-Front Concession Payment shall be payable by certified cheque, bank draft or wire transfer of immediately available funds to or to the order of HMQ (or as HMQ may otherwise direct in writing to Project Co).

#### 4.6 Monthly Concession Payments

- (a) Subject to the other provisions of this Project Agreement, from and after Commencement Date and as consideration for the Grant, Project Co shall pay to HMQ, without any prior demand and

without any deduction, abatement or set off whatsoever, except as otherwise expressly provided for in this Project Agreement, the Monthly Concession Payments in accordance with the terms of Schedule 20 – Payment Mechanism.

#### 4.7 Timing of Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, or unless such payments are stipulated as being payable on demand, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice relating to such payments.

#### 4.8 Manner of Payment

- (a) Unless otherwise stipulated in respect of any payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, all payments under this Project Agreement shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Ontario as may be designated by the recipient from time to time by written notice to the other Party.

#### 4.9 [INTENTIONALLY DELETED]

#### 4.10 Set-Off

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

#### 4.11 [INTENTIONALLY DELETED]

#### 4.12 Specified Revenue Adjustment

- (a) For the purposes of this Project Agreement, the following terms have the following meanings:

**“Applicable DE Service”** means the DE Service described in the following section of Schedule 20 – Payment Mechanism: (a) Appendix A – Sections 1, 2 and 3 (Knowledge Tests); (b) Appendix A – Section 5 (M1 Road Test); (c) Appendix A – Section 7 (M2 Road Test); (d)

Appendix A – Section 8 (Controlled Road Test); and (e) Appendix B – Section 1 (Z Endorsement Practical Test).

**“Current HMQ Market Share”** means, for each Applicable DE Service, the following amount applicable thereto: (a) Appendix A – Sections 1, 2 and 3 (Knowledge Tests) – 0.10; (b) Appendix A – Section 5 (M1 Road Test) – 0.70; (c) Appendix A – Section 7 (M2 Road Test) – 0.28; (d) Appendix A – Section 8 (Controlled Road Test) – 0.23; and (e) Appendix B – Section 1 (Z Endorsement Practical Test) – 0.93.

**“HMQ Market Share”** means, for the Applicable DE Service for the applicable Contract Year, the amount calculated in accordance with the following formula (rounded to two decimal places):

$$\text{VHMQ Realized} / (\text{VHMQ Realized} + \text{VPCo Realized})$$

Where:

**“VHMQ Realized”** means, for the Applicable DE Service for the applicable Contract Year, the service transaction volume for such Applicable DE Service realized during such Contract Year by HMQ and those persons and at those locations noted or identified in Sections 4.3(b)(ii), 4.3(b)(iii) and 4.3(b)(iv) of the Project Agreement, as applicable.

**“VPCo Realized”** means, for the applicable Contract Year, the service transaction volume for the Applicable DE Service realized during such Contract Year by Project Co.

**“Lower Band”** means, for the Applicable DE Service, the following amount applicable thereto: (a) Appendix A – Sections 1, 2 and 3 (Knowledge Tests) – 0.08; (b) Appendix A – Section 5 (M1 Road Test) – 0.52; (c) Appendix A – Section 7 (M2 Road Test) – 0.21; (d) Appendix A – Section 8 (Controlled Road Test) – 0.17; and (e) Appendix B – Section 1 (Z Endorsement Practical Test) – 0.70.

**“PL Per Transaction”** [REDACTED]

**“Upper Band”** means, for the Applicable DE Service, the following amount applicable thereto: (a) Appendix A – Sections 1, 2 and 3 (Knowledge Tests) – 0.12; (b) Appendix A – Section 5 (M1 Road Test) – 0.88; (c) Appendix A – Section 7 (M2 Road Test) – 0.35; (d) Appendix A – Section 8 (Controlled Road Test) – 0.29; and (e) Appendix B – Section 1 (Z Endorsement Practical Test) – 1.00.

- (b) Subject to Section 4.12(c), in the event that in any Contract Year the HMQ Market Share is greater than the Upper Band or less than the Lower Band, then an amount shall be calculated as follows:

$$(\text{PL Per Transaction})(\text{HMQ Market Share} - \text{Current HMQ Market Share}) (\text{VHMQ Realized} + \text{VPCo Realized})$$

If such amount is a positive amount, then HMQ shall pay to Project Co, in respect of such Contract Year, an amount equal to such positive amount. If such amount is a negative amount, then Project Co shall pay to HMQ an amount equal to the amount that when added to such negative amount, the sum thereof is zero (\$0.00).

- (c) Notwithstanding Sections 4.12(b):
- (i) no payment shall be made by a Party to the other Party pursuant to Sections 4.12(b), as applicable:
    - (A) if the amount of payment is less than \$[REDACTED]; or
    - (B) if, during the subject Contract Year:
      - (I) an event of Force Majeure occurs; or
      - (II) a Relief Event occurs; and
  - (ii) no payment shall be made by HMQ to Project Co pursuant to Section 4.12(b) if during the subject Contract Year a Project Co Event of Default occurs.
- (d) Within ninety (90) days after the end of each Contract Year, HMQ shall deliver to Project Co a written notice setting forth the calculation of the HMQ Market Share for such Contract Year, confirmation as to whether or not an event of Force of Majeure, a Relief Event and a Project Co Event of Default has occurred together with a statement as to whether, for such Contract Year, HMQ is to make a payment to Project Co pursuant to Section 4.12(b) and whether Project Co is to make a payment to HMQ pursuant to Section 4.12(b).
- (e) HMQ shall pay to Project Co amount calculated pursuant to Section 4.12(b), or Project Co shall pay to HMQ the amount calculated pursuant to Section 4.12(b), as applicable, within sixty (60) days after the date on which Project Co receives the written notice from HMQ contemplated pursuant to Section 4.12(d).
- (f) If the HMQ Market Share for a Contract Year is disputed or if any determination contemplated pursuant to Section 4.12(d) is disputed, then, in each case, such dispute shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to HMQ that as of Commercial Close:
- (i) Project Co is [REDACTED], is in good standing with the Ministry of Consumer and Corporate Affairs of Manitoba with respect to the filing of annual returns, and (to the extent applicable to [REDACTED] under the laws of Manitoba) has all the requisite

power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;

- (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the undertaking and performance of operations and services similar to the Project Operations in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
- (iii) 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;
- (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform its obligations under this Project Agreement;
- (v) 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;
- (vi) 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;
- (vii) no Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;

- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (x) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of HMQ, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xi) Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada);
- (xiii) Project Co is not a Non-Resident;
- (xiv) Project Co's only [REDACTED] has all the requisite power and authority to own its properties and assets and to carry on its business as it is currently being conducted;
- (xv) 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 Project Co GP or in relation to the operation, management and ownership of the Project; and
- (xvi) no Restricted Person has directly or indirectly, an Economic Interest in Project Co, Project Co GP or the Project.

## 5.2 HMQ Representations and Warranties

- (a) HMQ represents and warrants to Project Co that as of Commercial Close:
  - (i) [intentionally deleted]
  - (ii) [intentionally deleted]
  - (iii) subject to Section 5.2(a)(v)(C), (D), (E) and (F) and obtaining the ICS Regulation, HMQ has the requisite power, authority and capacity to perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;



- (iv) HMQ has obtained all necessary approvals to enter into this Project Agreement;
- (v) this Project Agreement has been duly authorized, executed, and delivered by HMQ and, subject to obtaining the ICS Regulation constitutes a legal, valid, and binding obligation of HMQ, enforceable against HMQ in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
  - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against HMQ and that a court may stay proceedings or the execution of judgments;
  - (C) statutory limitations of general application respecting the enforceability of claims against HMQ or its property;
  - (D) Section 11.3 of the *Financial Administration Act* (Ontario), R.S.O. 1990, c. F.12;
  - (E) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act* (Ontario); and
  - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act* (Ontario);
- (vi) the execution, delivery, and, subject to obtaining the ICS Regulation, performance by HMQ of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) **[intentionally deleted]**;
  - (B) the *Executive Council Act* (Ontario), R.S.O. 1990, c. E.25;
  - (C) any Applicable Law; or
  - (D) any covenant, contract, agreement, or understanding relating to the Project to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no HMQ Event of Default has occurred and is continuing;
- (viii) subject to obtaining the ICS Regulation, HMQ has the requisite power to provide the Grant to Project Co as contemplated in Section 4.2;

- (ix) in respect of the Personal Property that is being leased or licensed by HMQ to Project Co under the Lease and Licensing Agreement, no Personal Property Consents are required to be obtained by HMQ in order for Project Co to exercise all rights in and to such Personal Property as granted to Project Co under the Lease and Licensing Agreement; and
- (x) subject to obtaining the ICS Regulation, the Grant provided by HMQ in Section 4.2 constitutes a delegation by HMQ to Project Co under the *Improving Customer Service for Road Users Act* (Ontario) of the necessary powers, duties and responsibilities of HMQ under the *Highway Traffic Act* (Ontario) that is sufficient for Project Co to perform and conduct those elements of a road user program referenced in Sections 4.2(a)(i) to (ix) in accordance with the terms of this Project Agreement.

## 6. BACKGROUND INFORMATION

### 6.1 No Liability

- (a) Except as otherwise provided in Section 41.1, neither HMQ nor any Province Person shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from HMQ or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

### 6.2 No Warranty

- (a) Neither HMQ nor any Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither HMQ nor any Province Person warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents.
- (b) Except as otherwise provided in Section 41.1, neither HMQ nor any Province Person shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
  - (i) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
  - (ii) to review or update the Background Information; or
  - (iii) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

**6.3 No Claims**

- (a) Project Co acknowledges and confirms that:
- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
  - (ii) except as otherwise provided in Section 41.1, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against HMQ or any Province Person (whether in contract, tort or otherwise), including any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
    - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
    - (B) that the Background Information was incorrect or insufficient,nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

**7. PROJECT DOCUMENTS****7.1 Project Documents**

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

**7.2 Ancillary Documents**

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 32.3, 59.3 and 60.2 or except to prevent or to cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
  - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations

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

- (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of HMQ, whether actual or potential; or
- (iv) enter into, or permit the entry by any other person into, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

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

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

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

### **7.4 Compliance with Lending Agreements**

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

**8. HMQ RESPONSIBILITIES****8.1 General**

- (a) HMQ shall, at its own cost and risk:
  - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law; and
  - (ii) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that HMQ shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) HMQ shall, and shall cause all HMQ Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of HMQ or any Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude any designate appointed pursuant to Section 63.1 of this Project Agreement from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of any designate appointed pursuant to Section 63.1 of this Project Agreement from time to time.

**8.2 HMQ Permits, Licences and Approvals**

- (a) HMQ shall, at its own cost and risk:
  - (i) obtain on or before Financial Close, maintain, and, as applicable, renew all HMQ Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
  - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) HMQ shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as HMQ may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co to obtain, maintain or renew any Project Co Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that HMQ shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of HMQ or any HMQ Party. For greater certainty, HMQ shall not be obligated to:
  - (i) invoke Crown immunity or exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences and Approvals; and

- (ii) automatically grant Project Co Permits, Licences and Approvals for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co for such Project Co Permits, Licences and Approvals.

### 8.3 [INTENTIONALLY DELETED]

## 9. PROJECT CO RESPONSIBILITIES

### 9.1 Other Business

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

### 9.2 General

- (a) Project Co shall, at its own cost and risk:
  - (i) observe all provisions of this Project Agreement in compliance with Applicable Law;
  - (ii) perform all Project Operations:
    - (A) in compliance with Applicable Law;
    - (B) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
    - (C) so as to satisfy the Output Specifications;
    - (D) in accordance with Good Industry Practice;
    - (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
    - (F) in a timely and professional manner;
    - (G) with due regard to the health and safety of persons and property;
    - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of HMQ or any Province Persons to comply with Applicable Law;
    - (I) in a manner that will not interfere with or interrupt the provision of the DE Services, unless such interference or interruption is otherwise permitted pursuant to the provisions of this Project Agreement including the Output Specifications;

- (J) subject to the other provisions of this Project Agreement, at a level of service to meet the capacity demands of the DE Services from time to time, and in particular, provide or ensure the provision of an adequate number of competent personnel, all IT Systems (other than the HMQ IT Systems) and IT Services, required to perform the Project Operations in accordance with this Project Agreement, including Schedule 16 – IT Output Specifications and Good Industry Practice; and
- (K) in accordance with all other terms of this Project Agreement including complying with Section 50 and Schedule 24 – Transition Procedures; and
- (iii) cooperate with HMQ in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of HMQ's obligations under this Project Agreement.
- (b) Project Co shall not and Project Co covenants and agrees that no Affiliate of Project Co shall:
  - (i) operate a school, college, university, institution, training centre or like venture in the Province of Ontario that offers education, training and/or instruction regarding the operation of a motor vehicle or motorized vehicle;
  - (ii) offer education, training or instruction in the Province of Ontario regarding the operation of a motor vehicle or motorized vehicle to any person other than to an employee of Project Co or to any Project Co Party, in each case, for the purpose of the provision of the Project Operations;
  - (iii) directly or indirectly, offer, market or advertise, or permit any third party to offer, market or advertise, to the public any services other than the Project Operations or the Discretionary Services at or from any Service Delivery Point, except to the extent that such services are offered, marketed or advertised at or from a DE Multi-Use Location;
  - (iv) directly or indirectly, offer, market or advertise, or permit any third party to offer, market or advertise, to the public:
    - (A) at or from any DE Premises; or
    - (B) at or from any other premises which Project Co or any of its Affiliates owns, leases or licenses, within 15 metres of a DE Premises:
      - (I) sexually explicit products or services;
      - (II) tobacco or tobacco-related products;
      - (III) liquor (as that term is defined in the *Liquor Licence Act* (Ontario), R.S.O. 1990, c. L.19); or

- (IV) products or services that HMQ considers to be incompatible with or inconsistent with the promotion of safe driving, as determined by HMQ, in its sole discretion; or
- (v) engage in any activity or conduct that constitutes a Conflict of Interest including the use of Personal Information, HMQ Information or Project Data, other than in the performance of the Project Operations, without the prior written consent of HMQ, in its sole discretion.
- (c) Project Co shall perform the Customer-Facing Project Operations during the Operational Term only at or from the Service Delivery Points. Project Co shall ensure that each Service Delivery Point (including each of the DE Premises) is open and available to the general public for the Customer-Facing Project Operations during the Operational Term at the times and to the extent required in accordance with the Output Specifications.
- (d) Project Co shall, and shall cause any Project Co Party to, perform the Project Operations only from locations within Canada.
- (e) Project Co represents and warrants that any revenues generated by Project Co from any Discretionary Services in any Contract Year are forecasted to at no time exceed [REDACTED]% of the DE Services Revenue in such Contract Year.

### 9.3 Project Co Parties

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

### 9.4 Project Co Permits, Licences and Approvals

- (a) Project Co shall, at its own cost and risk:
  - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
  - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on HMQ or any Province Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences and Approvals without the prior written consent of HMQ, provided that neither HMQ nor any Province Person shall be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. HMQ shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on HMQ or any



Province Person by the requirements of any Project Co Permit, Licence or Approval obtained with HMQ's consent under this Section 9.4(b).

- (c) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as HMQ may request and as Project Co may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable HMQ to obtain, maintain or renew any HMQ Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of HMQ to obtain any HMQ Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.

## 9.5 Safety and Security

- (a) Project Co shall:
  - (i) keep the Service Delivery Points in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons or property on the Service Delivery Points; and
  - (ii) comply, and cause each Project Co Party to comply with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto.

## 9.6 Documentation and Information to be Delivered to HMQ

- (a) Project Co shall within 30 days of the date on which:
  - (i) it enters into any agreement relating to the Project Operations including, without limitation, a Subcontract with any Subcontractor;
  - (ii) it enters into any lease or occupancy arrangement of any nature relating to the DE Premises with any landlord;
  - (iii) any modifications, amendments or alternate arrangements are made in respect of any agreement relating to the Project Operations;
  - (iv) it receives any notice or communication from any person, whether such person is a party to any agreement relating to the Project Operations or otherwise, which notice or communication and/or the contents thereof may:
    - (A) give rise to a Project Co Event of Default;
    - (B) have a material adverse effect on Project Co or the Project Operations; or

- (C) jeopardize in any way Project Co's ability to perform its obligations under this Project Agreement;

in each case, provide to HMQ:

- (I) fully-executed and complete copies of each Subcontract, agreement, lease or occupancy agreement and any modifications or amendments made in respect thereof;
  - (II) details of any alternate arrangements made with any third persons in respect of any Subcontract, agreement, lease or occupancy agreement; or
  - (III) copies of any notices or communications described in Section 9.6(a)(iv).
- (b) With respect to any lease, sublease, rights of occupancy or similar occupancy arrangement in respect of any Service Delivery Point or any Subcontract between Project Co and any third persons in respect of the Project Operations (in each case, a "**Third Party Contract**"), Project Co shall:
- (i) not enter into, amend, modify, renew or extend any Third Party Contract without the prior written consent of HMQ;
  - (ii) make available to HMQ, upon request, copies of all such Third Party Contracts that have been entered into by Project Co or any Project Co Party that relate in any way to the Project Operations;
  - (iii) ensure that each Third Party Contract provides that all Project Co's rights and benefits under and in connection with such Third Party Contract are assignable or can be sublicensed to HMQ or to a person identified by HMQ without the necessity of obtaining any person's consent and contain non-disturbance provisions in favour of the assignee or sublicensee;
  - (iv) ensure that any lease, sublease, rights of occupancy or similar occupancy arrangement in respect of any Travel Points location and any DE Premises (other than a DE Multi-Use Location) that is to be in effect as at the commencement of the Termination Transition Period has a term that extends for a period of 2 years after the Expiry Date;
  - (v) ensure that any lease, sublease, rights of occupancy or similar occupancy arrangement in respect of any DE Multi-Use Location that is to be in effect as at the commencement of the Termination Transition Period has a term that extends for a period of 6 months after the Expiry Date; and

- (vi) ensure that each such Third Party Contract shall contain a provision, in form and substance acceptable to HMQ, allowing for Project Co to make available to HMQ or any person identified by HMQ the terms and provisions of the Third Party Contract.
- (c) With respect to any Collective Agreement, Project Co shall:
  - (i) ensure that such Collective Agreement has a term that extends not less than 6 months after the Expiry Date and not more than 12 months after the Expiry Date, to the extent that a Collective Agreement is in effect as at the commencement of the Termination Transition Period;
  - (ii) make available to HMQ, upon request, copies of all such Collective Agreements;
  - (iii) effective upon delivery of written notice to Project Co, obtain the prior consent and approval of HMQ to any modification or amendment to, or replacement of, any Collective Agreement;
  - (iv) provide to HMQ all drafts of any such Collective Agreements that are in negotiation between Project Co and the Union or any other applicable union or bargaining agent representing the employees performing any part of the Project Operations;
  - (v) respond in writing within not more than one Business Day to any questions that HMQ or New Project Co, as applicable, has posed to Project Co regarding the status of any negotiations with the Union or any other applicable union or bargaining agent representing the employees performing any part of the Project Operations; and
  - (vi) ensure that each such Collective Agreement shall contain a provision, in form and substance acceptable to HMQ, allowing for Project Co to make available to HMQ or any person identified by HMQ the terms and provisions of the Collective Agreement.

## 9.7 Protest and Trespass

- (a) HMQ shall not be responsible for the presence on or around the Service Delivery Points, or any other interference affecting the Project Operations, of any persons participating in civil disobedience, demonstration or protest action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Service Delivery Points (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Service Delivery Points shall not be a breach of any obligation, representation or warranty under this Project Agreement.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co throughout the Project Term (to the extent same is not otherwise the responsibility of the Police Service). If at any time during the Project Term any part of the Service Delivery Points is occupied, or access to the Service Delivery Points is prevented or interfered with, by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the HMQ Representative of such

occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Service Delivery Points, provided that if Project Co does so elect to exercise any such legal remedy, Project Co shall give the HMQ Representative not less than 24 hours notice prior to commencing any legal proceeding for that purpose or in the event such occurrence is at a DE Multi-Use Location, reasonable notice prior to commencing any 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 HMQ less than 24 hours prior to the commencement of such legal proceeding) and Project Co shall continually update the HMQ Representative as to the status of any such proceeding in reasonable detail and at reasonable intervals.

## **10. REPRESENTATIVES**

### **10.1 The HMQ Representative**

- (a) The HMQ Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the HMQ Representative and such other functions and powers of HMQ under this Project Agreement as HMQ may notify Project Co from time to time.
- (b) HMQ may, from time to time by written notice to Project Co, change the HMQ Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no HMQ Representative has been appointed, or when the HMQ Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the HMQ Representative's functions under this Project Agreement, HMQ shall perform or may, by written notice to Project Co, promptly appoint an alternative HMQ Representative to perform the functions which would otherwise be performed by the HMQ Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative HMQ Representative which is permitted by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The HMQ Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the HMQ Representative which is authorized by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

**10.2 The Project Co Representative**

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

**10.3 Communications to Representatives**

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

**10.4 Key Individuals**

- (a) The individuals who are critical to the performance of the Project Operations are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Project Operations in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, unless expressly provided for in this Section 10.4(a), for the duration of the Project Operations, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of HMQ such involvement would have a material adverse effect on the Project Operations. Notwithstanding the foregoing, those Key Individuals who are participating in any way with the delivery of IT Services, whether as a member of Project Co or any Project Co Party, may be involved in other projects on behalf of Project Co or any Project Co Party provided that

such Key Individuals at all times remain involved in the Project Operations and are readily accessible and responsive to HMQ in respect of inquiries relating to the Project Operations.

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

## **11. OPERATIONS COMMITTEE**

### **11.1 Establishment**

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Operations Committee**”) consisting of:
  - (i) the HMQ Representative and at least 2 representatives appointed by HMQ from time to time; and
  - (ii) the Project Co Representative and at least 2 representatives appointed by Project Co from time to time.
- (b) Members of the Operations Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Operations Committee.
- (c) Members of the Operations Committee may establish sub-committees mandated to undertake operational activities as directed by the Operations Committee.
- (d) 1 of the representatives of HMQ shall be the chairperson of the Operations Committee.

### **11.2 Function and Role**

- (a) The Operations Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations.
- (b) Subject to Section 11.2(d) the Operations Committee shall be responsible for receiving and reviewing all material matters referred to it by HMQ or Project Co, including but not limited to:
  - (i) the procedures to be performed during the Front-End Transition Period and the Expiry Transition Period as set out in Schedule 24 – Transition Procedures;

- (ii) compliance by Project Co, any Project Co Party or any Subcontractor with the standards set out in the Output Specifications;
  - (iii) any quality assurance and privacy issues pertaining to the performance of the Project Operations;
  - (iv) any community and media relations issues in accordance with Schedule 18 – Communications Protocol;
  - (v) business improvements and/or changes;
  - (vi) issues relating to customer service;
  - (vii) those matters referenced in Schedule 34 – Notifiable Incidents; or
  - (viii) any other issues pertaining to the Project Operations.
- (c) Subject to Section 11.2(d), any unanimous decision of the Operations Committee shall be final and binding on the Parties. If the Operations 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) Notwithstanding Sections 11.2(b) and (c), the Operations Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any Variation, as these matters will be addressed in accordance with Section 39 of this Project Agreement and Schedule 22 – Variation Procedures; or
  - (iii) any matter with respect to which HMQ has a right of consent or in respect of which HMQ may exercise discretion pursuant to this Project Agreement.
- (e) In addition to those functions to be performed by the Operations Committee as set forth in Section 11.2(b), the Operations Committee may establish and propose to each of HMQ and Project Co for acceptance by each of HMQ and Project Co a protocol to be observed by Parties relating to:
- (i) the review of Third Party Contracts and any Collective Agreement as required by Sections 9.6(b) and 9.6(c), respectively;
  - (ii) the manner in which any responses are to be conveyed by one Party to the other Party in respect of information, consents or approvals to be provided by one Party to the other Party in respect of such Third Party Contracts and the Collective Agreement; and

- (iii) the timelines for responding or communicating with each other in respect of information, consents or approvals in respect of the Third Party Contracts or the Collective Agreement.

### **11.3 Term of Operations Committee**

- (a) Unless otherwise agreed, the Operations Committee shall operate until the Termination Date.

### **11.4 Replacement of Committee Members**

- (a) HMQ shall be entitled to replace any of its representatives on the Operations Committee by written notice to Project Co. HMQ will use commercially reasonable efforts to deliver prior written notice of any such replacements to Project Co. Project Co may not replace any of its representatives on the Operations Committee without the prior written consent of HMQ.

### **11.5 Procedures and Practices**

- (a) The members of the Operations Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Operations Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Operations Committee such other persons as HMQ may agree;
  - (iii) exclude from any meeting of the Operations Committee such persons as HMQ may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Operations Committee.
- (b) Once established, the Operations Committee shall meet from time to time at the request of HMQ at any time between the Financial Close and the Termination Date, unless otherwise agreed by the members of the Operations Committee or the Parties.
- (c) In the event of a labour dispute that is affecting the performance of the Project Operations, whether it is a labour dispute involving only the employees, agents or employees of agents of Project Co or any Project Co Party, or labour disputes involving only the employees, agents or employees of agents of the Province or any Province Person, the Operations Committee shall meet on not less than a weekly basis, or such shorter period as may be determined in the sole discretion of HMQ, to review and consider how to mitigate any disruption to the Project Operations as a result of such labour dispute and any steps that can be taken by Project Co or HMQ, as the case may be, in connection with addressing such labour dispute.
- (d) Any one of the Project Co Representative and any of HMQ's representatives on the Operations Committee may convene a special meeting of the Operations Committee at any time. Special



meetings of the Operations Committee may be convened on not less than 5 Business Days notice to all members of the Operations 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.

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

## 12. LEASE AND LICENSING AGREEMENT

### 12.1 Lease and Licensing Agreement

- (a) Subject to the provisions of this Project Agreement, at Financial Close HMQ and Project Co shall enter into a lease, sublease, licence and/or sublicense for the Personal Property substantially in the form of the agreement attached as Schedule 10 – Form of Lease and Licensing Agreement (the “**Lease and Licensing Agreement**”).
- (b) Project Co acknowledges that certain of the Personal Property (the “**Third Party Personal Property**”) is owned by third parties (the “**Third Party Personal Property Owners**”) and leased or licensed to HMQ. Accordingly, despite Section 12.1(a), the grant of the Lease and Licensing Agreement for the Third Party Personal Property shall be subject to HMQ obtaining, if applicable, any required consents from the Third Party Personal Property Owners (the “**Personal Property Consents**”).

- (c) Subject to Section 12.1(e), HMQ shall use reasonable efforts to obtain any required Personal Property Consents. However, HMQ shall not be obliged to pay any money in order to obtain such Personal Property Consents.
- (d) If any Third Party Personal Property Owner imposes terms and conditions on the giving of such Personal Property Consents that are reasonable, such terms and conditions shall form part of the Lease and Licensing Agreement. If any Third Party Personal Property Owner requires HMQ to use a form of lease or licence other than that contemplated in Section 12.1(a) that is reasonable, then for the purposes of this Section 12.1 such other form of lease or licence will be deemed to be the applicable Lease and Licensing Agreement for purposes of the relevant Third Party Personal Property. If any Third Party Personal Property Owner reasonably requires Project Co to enter into an agreement or other document in connection with such Lease and Licensing Agreement that is reasonable, Project Co shall do so.
- (e) If HMQ is unable to obtain any required Personal Property Consent within a period of 30 days prior to the Commencement Date or if such Personal Property Consent is subject to unreasonable terms and conditions or if the form of sublease, agreement or other document that the Third Party Personal Property Owner requires is unreasonable, HMQ shall not lease or license the relevant Third Party Personal Property (and, for the avoidance of doubt, there shall not be any corresponding Variation), and for greater certainty, Project Co shall be and shall continue to be responsible to perform the Project Operations without the benefit of the relevant Third Party Personal Property. If HMQ subsequently obtains such Personal Property Consent and Project Co has not become legally bound in favour of a third party with respect to a replacement of the applicable Third Party Personal Property, then at that time HMQ and Project Co shall execute and deliver a Lease and Licensing Agreement in accordance with Section 12.1(a) and Section 12.1(d).
- (f) Project Co shall be responsible for, and shall pay as they become due, all payments of any kind whatsoever that are the obligation of the lessee or the licensee under the Lease and Licensing Agreement.

### **13. QUALITY MANAGEMENT**

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

### **14. REPORTING OBLIGATIONS**

- (a) Project Co shall comply with the provisions of Schedule 14 – Reporting Obligations.

### **15. SERVICE DELIVERY POINTS**

#### **15.1 Service Delivery Points**

- (a) Project Co shall comply with the provisions of Part I of Schedule 7 – Service Delivery Points.

**16. REAL ESTATE, DE SERVICES ASSETS AND [REDACTED]****16.1 Acceptance of all Service Delivery Points**

- (a) Project Co acknowledges and agrees that it has reviewed and investigated all Service Delivery Points, including the Background Information, prior to executing this Project Agreement and agrees to accept the Service Delivery Points on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to the obligations of HMQ in Section 8, Project Co shall not be entitled to make any claim of any nature whatsoever against HMQ or any Province Person on any grounds relating to the Service Delivery Points, including the fact that incorrect or insufficient information on any matter relating to the Service Delivery Points was given to it by any person, whether or not a Province Person, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Service Delivery Points provided by such person to Project Co.
- (b) Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) performed all necessary due diligence and investigation on the real estate, lands and premises of or relating to the Service Delivery Points, examined such real estate, lands and premises and their surroundings;
  - (ii) satisfied itself as to the adequacy of the rights of access to, from and through the Service Delivery Points and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
  - (iii) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Service Delivery Points; and
  - (iv) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties in respect of the Service Delivery Points.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

**16.2 [INTENTIONALLY DELETED]****16.3 [REDACTED]**

- (a) [REDACTED]
- (b) [REDACTED]

**17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS****17.1 Governmental and Third Party Fees**

- (a) Project Co shall be responsible for all Financial Obligations under or in respect of all Project Co Permits, Licences and Approvals and HMQ shall be responsible for all Financial Obligations under or in respect of all HMQ Permits, Licences and Approvals, including, as applicable in either case:
- (i) any development charges relating to the Project Operations;
  - (ii) any security deposits required under any Permits, Licences and Approvals; and
  - (iii) any other amounts payable under any Permits, Licences and Approvals.
- (b) The Parties agree that any refund, partial rebate or credit granted by any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of HMQ to the extent such Financial Obligations were paid by HMQ and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

**18. CUSTOMER SATISFACTION SURVEYS**

- (a) Project Co shall comply with the provisions of Schedule 19 – Customer Satisfaction Surveys.

**19. COORDINATION AND NO DISRUPTION**

- (a) Project Co shall perform the Project Operations so as to coordinate with the operations of HMQ, any Province Person or any Governmental Authority engaged in activities on or about the Service Delivery Points, as applicable.
- (b) Project Co shall use commercially reasonable efforts to minimize any interference with the operations of HMQ, any Province Person or any Governmental Authority, including the performance of the Governmental Activities.

**20. [INTENTIONALLY DELETED]****21. ACCESS AND MONITORING****21.1 Access for Province Persons**

- (a) Subject to Section 21.1(b), but without limiting any of HMQ's rights in respect of the Service Delivery Points, Project Co acknowledges and agrees that throughout the Project Term, HMQ, the Province Persons and their respective representatives shall have unrestricted access to the areas of the Service Delivery Points and any other premises, in each case, from which the Project Operations are being performed (the "**Project Co Premises**"), including without limitation, any

premises where any Project Data is stored by Project Co at all times during normal working hours or in the case of an Emergency as determined by HMQ, in its sole discretion, at any time, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Project Operations, or to fulfill any statutory, public or other duties or functions.

- (b) In exercising their access rights under Section 21.1(a), HMQ, the Province Persons and their respective representatives shall:
  - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at any of the Project Co Premises for the use of HMQ and/or Province Persons); and
  - (ii) comply with the provisions of any reasonable security requirements and/or protocols relating to such Project Co Premises, provided that such requirements and/or protocols are not in any way in conflict, or inconsistent, with the rights of HMQ under this Project Agreement and there shall be no cost or expense to be incurred by HMQ or any Province Persons in exercising their access rights under Section 21.1(a).
- (c) HMQ may, for security reasons, at any time, in its sole discretion, require Project Co to deny access to any Project Co Party identified by HMQ in or to those areas of the Service Delivery Points from which the Project Operations are being performed.

## **21.2 Increased Monitoring**

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

## **21.3 No Relief from Obligations**

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

**21.4 Access by Others**

- (a) Subject to Section 21.4(b), Project Co shall ensure that throughout the Operational Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law:
  - (i) Province Persons, inspectors and other persons authorized to act on behalf of HMQ have access to the DE Premises for inspection purposes; and
  - (ii) all Province Persons, Governmental Authorities and Emergency Service Providers have access to the DE Premises in order to carry out any work in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law.
- (b) In exercising their access rights under Section 21.4(a), each person referred to therein shall (except in the case of access rights described in Section 21.4(a) for the purpose of responding to an Emergency (for the purposes of this clause (b), references in the definition of “Emergency” to HMQ or the HMQ Representative shall be deemed to be references to the applicable Governmental Authority or Emergency Service Provider) and except to the extent inconsistent with the applicable requirements of such Governmental Authority or Emergency Service Provider):
  - (i) provide reasonable prior notice appropriate to the circumstances; and
  - (ii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

**22. [INTENTIONALLY DELETED]**

**23. [INTENTIONALLY DELETED]**

**24. [INTENTIONALLY DELETED]**

**25. [INTENTIONALLY DELETED]**

**26. [INTENTIONALLY DELETED]**

**27. [INTENTIONALLY DELETED]**

**28. HUMAN RESOURCES**

**28.1 Staff Competency**

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

the performance of the Project Operations with the requisite level of skill and experience to perform the Project Operations in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to perform the Project Operations in a manner that will at all times fulfill the obligations of Project Co under this Project Agreement including the obligations in Section 9.3(a) and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the demand for the DE Services;

- (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirements;
- (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations to ensure the proper performance of this Project Agreement; and
- (iv) it complies at all times with the provisions of Schedule 17 – Training.
- (v) Project Co shall execute, and shall cause all Project Co Parties, as may be required, to execute the MGS Memorandum of Understanding.

## **28.2 Disciplinary Action**

- (a) HMQ, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on or at the Service Delivery Points or at work is otherwise considered by HMQ to be undesirable, to constitute a threat to the health and/or safety of any of the users of the DE Services which HMQ considers may potentially compromise the reputation or integrity of HMQ and/or any HMQ Party are inconsistent with the nature of the procedures and requirements for the issuance of Driver's Licences in the Province of Ontario, so as to negatively affect public perception of those procedures and requirements. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise HMQ in writing of the outcome of any disciplinary action taken in respect of such person.

## **28.3 Human Resources Policies**

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

Requirements and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to HMQ on a timely basis.

#### **28.4 Management Organizations**

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

#### **28.5 Investigations**

- (a) Project Co shall, at its cost, and to the extent permitted by Applicable Law, make a proper Investigation of each individual proposed to be engaged or otherwise used by Project Co to deliver any part of the Project Operations, including any individual engaged or otherwise used by a Subcontractor to deliver any part of the Project Operations. Project Co shall, at its cost, and to the extent permitted by Applicable Law, also make such Investigation of each individual engaged or otherwise used by Project Co to deliver any part of the Project Operations, including any individual engaged or otherwise used by a Subcontractor to deliver any part of the Project Operations, in accordance with Part 2, Section 2.1(a) of Schedule 17 – Employees and Training.

### **29. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS**

#### **29.1 Standards**

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

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

#### **29.2 Stocks**

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



**30. [INTENTIONALLY DELETED]****31. MONITORING****31.1 Monitoring of Performance**

- (a) Project Co shall monitor the performance of the Project Operations in the manner and at the frequencies set out in the Output Specifications and Schedule 20 – Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations as set out in the Output Specifications and Schedule 20 – Payment Mechanism, Project Co shall, as reasonably requested by HMQ, provide the HMQ Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) HMQ may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring.

**31.2 Warning Notices**

- (a) Without prejudice to HMQ's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues any of the following Performance Penalties or more (index-linked) in any one Contract Month, then HMQ may give written notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "Warning Notice":
  - (i) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 1;
  - (ii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 2;
  - (iii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 3;
  - (iv) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 4;
  - (v) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 5;
  - (vi) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 6;
  - (vii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 7;

- (viii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 8;
- (ix) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 9;
- (x) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 10;
- (xi) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 11;
- (xii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 12;
- (xiii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 13; and
- (xiv) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 14.

### 31.3 Monitoring Notices

- (a) Without prejudice to HMQ's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues any of the following Performance Penalties or more (index linked) in any rolling 3 Contract Months, HMQ may, by notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement until such time as Project Co shall have demonstrated to the reasonable satisfaction of HMQ that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Project Operations:
  - (i) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 1;
  - (ii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 2;
  - (iii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 3;
  - (iv) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 4;
  - (v) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 5;

- (vi) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 6;
  - (vii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 7;
  - (viii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 8;
  - (ix) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 9;
  - (x) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 10;
  - (xi) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 11;
  - (xii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 12;
  - (xiii) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 13; and
  - (xiv) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 14.
- (b) HMQ may give a Warning Notice pursuant to Section 31.2 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
- (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
  - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that HMQ was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify HMQ in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
  - (iii) if Project Co gives HMQ a notice under Section 31.3(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10

Business Days of HMQ's receipt of such notice, may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure;

- (iv) if Project Co fails to increase Project Co's monitoring as provided herein, HMQ may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 31.3(c)(iii);
  - (v) if it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that HMQ was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse HMQ for any reasonable costs and expenses incurred by or on behalf of HMQ in relation to the giving of such Monitoring Notice; and
  - (vi) if it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that HMQ was not entitled to give the applicable Monitoring Notice, HMQ shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of HMQ that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar aspect of the Project Operations, Project Co may apply for the withdrawal of such Monitoring Notice. If HMQ is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that HMQ was not entitled to give any Monitoring Notice, HMQ shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

## **32. HMQ'S REMEDIAL RIGHTS**

### **32.1 Exercise of Remedial Rights**

- (a) HMQ may exercise all rights set out in this Section 32 at any time and from time to time if:
- (i) HMQ, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
    - (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any Province Person;
    - (B) does or can reasonably be expected to result in a materially adverse interruption of the Project Operations;

- (C) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities; or
- (D) may potentially compromise the reputation or integrity of HMQ and/or any HMQ Party or the nature of the procedures and requirements for the issuance of Driver's Licences in the Province of Ontario, so as to negatively affect public perception of those procedures and requirements,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C), HMQ shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C) actually occur; and
  - (F) in respect of Section 32.1(a)(i)(D), HMQ shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;
- (ii) Project Co accrues any of the following Performance Penalties or more (index linked) in any Contract Month:
- (A) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 1;
  - (B) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 2;
  - (C) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 3;
  - (D) \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 4;

- (E)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 5;
  - (F)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 6;
  - (G)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 7;
  - (H)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 8;
  - (I)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 9;
  - (J)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 10;
  - (K)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 11;
  - (L)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 12;
  - (M)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 13; and
  - (N)     \$[REDACTED] of Performance Penalties in respect of Schedule 12, Part 3, item reference 14.
- (iii)    while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives another Monitoring Notice in respect of the same or similar work that is the subject of the original Monitoring Notice;
  - (iv)    pursuant to Part 5 of Schedule 11 - Quality Management, a Quality Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification as provided in the Output Specifications;
  - (v)    a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations or the Governmental Activities;
  - (vi)    HMQ has received a notice under the DE Service Provider's Direct Agreement that entitles HMQ to exercise step in rights thereunder; or

- (vii) Project Co has failed to comply with any written direction issued by or on behalf of HMQ (or any designate appointed pursuant to Section 63.1).

### **32.2 Emergency**

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

### **32.3 Rectification**

- (a) Without prejudice to HMQ's rights under Section 45 and any other rights under this Project Agreement including pursuant to Schedule 25 – Insurance and Performance Security, in any of the circumstances set out in Sections 32.1 or 32.2, HMQ may, by written notice, require Project Co to take such steps as HMQ, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors, and Project Co shall use commercially reasonable efforts to comply with HMQ's requirements as soon as reasonably practicable.

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

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

then HMQ may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, but subject to the provisions of Section 32.3(e), exercising step in rights under the DE Service Provider's Direct Agreement and requiring the termination and replacement of Subcontractors, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Project Operations to the standards required by this Project Agreement, and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 32.3, in the event of an Emergency, the notice under Section 32.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and HMQ may, prior to Project Co's confirmation under Section 32.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

- (d) Where HMQ considers it to be necessary to do so, the steps which HMQ may take pursuant to this Section 32.3 subsequent to the provision of the notice under Section 32.3(a) unless the notice is given at a later time as provided in Section 32.3(c), may, at HMQ's option, include the partial or total suspension of Project Co's right and obligation to perform any Project Operations having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Project Operations, and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply, but such suspension shall be only for so long as, as applicable:
- (i) the circumstances referred to in Section 32.1 or 32.2 subsist; or
  - (ii) in respect of any such circumstances relating to Project Co's performance of the Project Operations, until such time as Project Co shall have demonstrated to the reasonable satisfaction of HMQ that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to this Section 32.3 and as are necessary to be capable of performing its obligations in respect of the relevant Project Operations to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.
- (e) Notwithstanding the rights of HMQ under this Section 32.3, but without limiting any other rights of HMQ under this Project Agreement, HMQ shall not have the right to exercise the step-in rights referenced in Section 32.3(b) in respect of Project Operations being conducted at a DE Multi-Use Location or at a Travel Points location.

#### **32.4 Costs and Expenses**

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

#### **32.5 Reimbursement Events**

- (a) In this Section 32.5, a "Reimbursement Event" means:
- (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a Province Person;
  - (ii) a labour dispute involving employees of any Province Person that materially affects or can reasonably be expected to materially affect the Project Operations; or
  - (iii) an Emergency.



- (b) If HMQ either takes steps itself or requires Project Co to take steps in accordance with this Section 32 as a result of a Reimbursement Event:
  - (i) HMQ shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of HMQ's rights pursuant to this Section 32 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
  - (ii) subject to Section 32.5(c), HMQ shall bear all costs and expenses incurred by HMQ in relation to the exercise of HMQ rights pursuant to this Section 32.
- (c) If, in exercising its rights pursuant to this Section 32, HMQ performs any part of the Project Operations either itself or by engaging others, HMQ shall be entitled to charge to Project Co and Project Co shall pay to HMQ the reasonable cost of performing such Project Operations. If Project Co makes such a payment, then Project Co shall be relieved of its reimbursement obligations under Section 32.4(a)(ii) up to the amount equal to the payment.

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

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

### **33. [INTENTIONALLY DELETED]**

### **34. FEE COLLECTION**

#### **34.1 Project Co Fees**

- (a) Except as otherwise provided in Schedule 35 – Fee Collection or pursuant to a Variation, Project Co shall perform all of the Project Operations without charge or cost to HMQ or the public.
- (b) Project Co shall comply with the provisions of Schedule 35 – Fee Collection.

**34.2 Dispute**

- (a) If either Party, acting in good faith, disputes all or any part of an amount payable in accordance with this Project Agreement, such Party shall notify the other Party in writing of that part of such amount (insofar as at the time of such notice such first-mentioned Party is reasonably able to quantify it) which such first-mentioned Party disputes and submit to the other Party such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

**35. TAXES****35.1 Taxes**

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST but inclusive of all other Taxes. Applicable HST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination. For clarity, Project Co shall pay applicable HST on the Up-Front Concession Payment and on all Monthly Concession Payments.
- (b) HMQ shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by HMQ upon and in connection with all taxable supplies made by Project Co to HMQ under this Project Agreement. Project Co shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Project Co upon and in connection with payments by Project Co to HMQ under this Project Agreement.

**35.2 [REDACTED]**

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]

**35.3 [REDACTED]**

- (a) [REDACTED]
- (b) [REDACTED]
- (i) [REDACTED]

(ii) [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

(iii) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

**35.4 [REDACTED]**

(a) [REDACTED]

(b) [REDACTED]

(i) [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

**35.5 Reduction of the consideration for the Grant**

(a) The Parties acknowledge and agree that in the event that [REDACTED] are applicable, then any payments made by HMQ to Project Co pursuant thereto, shall constitute a reduction of the consideration payable by Project Co for the Grant.

**35.6 Acknowledgements**

(a) The Parties acknowledge, confirm and agree that the termination of the Project Agreement will not prejudice Project Co's entitlement to the payment of [REDACTED] owing by HMQ to Project Co prior to such termination.

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

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

**36.2 Delivery and Use of Financial Model**

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

**37. RECORDS, INFORMATION AND AUDIT****37.1 Records Provisions**

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

**37.2 Records, Information and Audit**

- (a) In addition to complying with this Section 37.2, Project Co shall comply with the audit requirements set forth in Schedule 11 – Quality Management.
- (b) Project Co shall provide and shall cause each Subcontractor to provide to HMQ all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as HMQ may reasonably require from

time to time for any purpose in connection with this Project Agreement, including for the purposes of determining all or any part of the [REDACTED] payable by HMQ to Project Co [REDACTED]. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, any Subcontractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.

- (c) Project Co shall also provide to HMQ, and shall require each Subcontractor, including the DE Service Provider, to provide to HMQ (at HMQ's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 37.2(b) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as HMQ may reasonably require from time to time to enable HMQ to provide reports, notices, returns and the like pursuant to Applicable Law and to conduct any audits that it has the right to conduct pursuant to this Project Agreement, including information and documentation pertaining to HST related matters or security, health and safety, fire safety, emergency preparedness, employees and human resources related matters or the Quality Management System.
- (d) Project Co shall promptly after receipt provide HMQ with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (e) Project Co shall promptly notify HMQ of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (f) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions and including relating the HST matters (including, in particular, relating to, in respect of or in connection with [REDACTED]), which are required to be provided to or available to HMQ hereunder, shall be subject and open to inspection and audit by HMQ at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless HMQ and Project Co otherwise agree. HMQ shall also have the right to monitor and audit the performance of any and all parts of the Project Operations (including the right to monitor and audit the accounting systems and procedures maintained or adopted by Project Co for purposes of HST matters, including for the purposes of calculating [REDACTED]) wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of HMQ monitoring and auditing such parts of the Project Operations, including providing them with access and copies (at HMQ's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Project Operations (including in the context of HST matters, including for the purposes of

calculating [REDACTED]). Except as otherwise provided herein, all of HMQ's costs for the inspections, audits and monitoring shall be borne by HMQ.

- (g) In conducting an audit of Project Co under Section 37.2 or as otherwise provided under this Project Agreement, HMQ shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at HMQ's reasonable cost) of all books and records of Project Co required to be provided to or available to HMQ hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with HMQ and its auditors in the conduct of any audits, including by making available all such records and accounts in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with HMQ all matters arising from such audits, including the refunding of monies to HMQ where applicable. At the reasonable request of HMQ's auditors, Project Co shall provide such information, reports, documents and records as HMQ's auditors may reasonably require.
- (h) HMQ's rights pursuant to this Section 37.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (i) HMQ's rights pursuant to this Section 37.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. HMQ's right pursuant to this Section 37.2 may also be exercised by the Auditor General of Ontario without the requirement for further action on the part of HMQ.
- (j) In the event that HMQ exercises its right to conduct any audit pursuant to Section 37.2 for the purposes of confirming either the calculation of [REDACTED], and it is determined pursuant to such audit that Project Co was incorrect in its determination of [REDACTED], as applicable, then Project Co shall reimburse HMQ for all costs and expenses incurred by HMQ (including HMQ's internal costs and expenses) in the context of such audit and in the context of any audit conducted thereafter by or on behalf of HMQ pursuant to Section 37.2 regarding the calculation of [REDACTED].

## **38. CHANGES IN LAW**

### **38.1 Performance after Change in Law**

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

### **38.2 Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, Project Co shall be entitled to seek compensation in an amount so as to put Project Co in no better and no worse position than it would have been in had the Relevant Change in Law not occurred, taking into consideration Sections 38.2(b)(iii)(D) and 38.2(b)(iii)(F). Any such compensation shall be calculated in

accordance with this Section 38.2. Project Co shall promptly provide HMQ with any information HMQ may reasonably require in order to determine the amount of such compensation.

- (b) On the occurrence of a Relevant Change in Law:
- (i) Project Co may give notice to HMQ of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
  - (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
    - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
    - (B) Project Co shall be responsible for obtaining all Project Co Permits, Licences and Approvals required in respect of the Variation;
    - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
    - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
    - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, 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;
    - (F) any entitlement to compensation payable shall be in accordance with this Section 38.2, and any calculation of compensation shall take into consideration, *inter alia*:
      - (I) any failure by a Party to comply with Section 38.2(b)(iii)(E);

- (II) any increase or decrease in Project Co's costs resulting from such Relevant Change in Law;
  - (III) in the case of any DE Specific Change in Law, any increase or reduction in DE Service Revenue resulting from such DE Specific Change in Law; and
  - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 38.2. For certainty and without limiting the provisions of this Section 38.2, the only compensation to which Project Co may be entitled in accordance with this Section 38.2 in respect of any DE Specific Change in Law is compensation for any change in DE Service Revenue affected as a result of such DE Specific Change in Law. To the extent there is other revenue generated by Project Co from a Service Delivery Point, from a Discretionary Service or by Project Co, an Affiliate of Project Co or a third person at a DE Multi-Use Location, the occurrence of a DE Specific Change in Law shall at no time give rise to a right of Project Co or any other person to claim from HMQ any compensation in respect of such revenues.
- (d) In relation to a Relevant Change in Law that results in a net increase in costs incurred by Project Co in performance of the Project Operations, taking into consideration, *inter alia*, Section 38.2(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given calendar year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same calendar year) amounts to less than \$[REDACTED] (index linked) in that calendar year, Project Co shall not be entitled to any payment or compensation pursuant to this Section 38.2 or otherwise in respect of the cost impact of that Relevant Change in Law in that calendar year, or, except as otherwise provided in this Project Agreement, any other relief in respect of such Relevant Change in Law in that calendar year.
- (e) If Project Co is (or claims to be) affected by a Relevant Change in Law, Project Co shall, and shall require all Project Co Parties to, take and continue to use commercially reasonable efforts:
  - (i) to eliminate or mitigate the consequences of such event on 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 Relevant Change in Law; and



- (iii) to resume performance of its obligations under this Project Agreement affected by the Relevant Change in Law as soon as practicable.
- (f) To the extent that Project Co does not comply with its obligations under Section 38.2(e), such failure shall be taken into account in determining Project Co's entitlement to compensation in respect of the Relevant Change in Law, as set out in Section 38.2(a).
- (g) Subject to Section 38.2(a), if HMQ is required to compensate Project Co pursuant to this Section 38.2, then HMQ may pay such compensation as a lump sum payment or payments at the times and in the manner to be agreed with Project Co, acting reasonably.
- (h) For certainty, any amendment to or modification of any provision of any Policy Manual after Commercial Close shall constitute a Change in Law and shall be deemed to discriminate directly against the DE Services or Project Co; provided, however that such a Change in Law shall not be a Discriminatory Change in Law in the events or circumstances referred to in clauses (c), (e) or (f) in the definition of "Discriminatory Change in Law" set forth in Schedule 1 – Definitions and Interpretation.

### **38.3 Application of Schedule 20 – Payment Mechanism**

- (a) For greater certainty, neither:
  - (i) the application of the indexation rules set out in Section 4 or Section 5 of Part B of Schedule 20 – Payment Mechanism to Indexed DE Services; nor
  - (ii) the application of the indexation rules set out in Section 6 of Part B of Schedule 20 – Payment Mechanism to Non-Indexed DE Services,shall constitute a DE Specific Change in Law.

## **39. VARIATIONS**

### **39.1 Variation Procedure**

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if either (i) a written direction issued by or on behalf of HMQ to Project Co or any Project Co Party or (ii) a unilateral amendment to the Project Agreement by the Minister pursuant to Section 6 of the *Improving Customer Service for Road Users Act, 2001* (Ontario) results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations.

- (c) Without limiting Project Co's obligations pursuant to Section 9.3 and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations.

#### **40. [INTENTIONALLY DELETED]**

### **41. COMPENSATION EVENTS**

#### **41.1 Potential Reimbursement**

- (a) Subject to Section 41.1(b) and 41.1(c), in the event that:
  - (i) any Assigned HMQ Contract is not a true or complete copy of the original; or
  - (ii) any Assigned HMQ Contract is amended, supplemented or otherwise modified, or terminated, during the time period from Commercial Close to and including the Commencement Date;

then, in each case, HMQ shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any of the circumstances referred in Section 41.1(a)(i) or 41.1(a)(ii), including costs arising from any commercially reasonable steps taken to cure or mitigate against such circumstances, together with any applicable margin for overhead and profit on such Direct Costs, all as set out in Schedule 22 - Variation Procedure. With respect to an Assigned HMQ Contract in respect of which HMQ shall have an obligation to reimburse Project Co in accordance with Subsections 41.1(a)(i) or (ii), such reimbursement obligation of HMQ shall remain in effect with respect to the remainder of the term of such Assigned HMQ Contract as at the Commencement Date.

- (b) HMQ shall have no obligation or liability to reimburse Project Co pursuant to Section 41.1(a) to the extent that:
  - (i) pursuant to Section 41.1(a)(i), in the case of any Assigned HMQ Contract not being a true and complete copy of the original, such circumstance is due to, or the result or consequence of, any act, omission or failure by Project Co or any Project Co Party; or
  - (ii) pursuant to Section 41.1(a)(ii), in the case of any amendment, supplement or other modification of or to any Assigned HMQ Contract during the time period from Commercial Close to and including the Commencement Date, such amendment, supplement or other modification was consented to, agreed to or otherwise authorized by Project Co or any Project Co Party.
- (c) 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:

- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement; and
- (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Compensation Event.

To the extent that Project Co does not comply with its obligations under this Section 41.1(c), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 41.1.

## **42. EXCUSING CAUSES**

### **42.1 Definition**

- (a) For the purposes of this Project Agreement, "Excusing Cause" means any of the following events or circumstances if it occurs in respect of the Project Operations and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Operations:
  - (i) the implementation of a Variation to the extent Project Co has identified any impact on the Project Operations in its Estimate and such impact has been documented in the Variation Confirmation;
  - (ii) any breach by HMQ of any of HMQ's obligations under this Project Agreement, except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
  - (iii) any deliberate or negligent act or omission of any Province Person or any failure by any Province Person (having regard to the interactive nature of the activities of such Province person and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co's performance of the Project Operations, except to the extent:
    - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
    - (B) the Province Person is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
    - (C) any such act, omission or failure was contemplated in the Output Specifications or was otherwise provided for in this Project Agreement; or
    - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement;
  - (iv) the implementation of any action taken by HMQ, or any suspension of Project Co's obligation to perform all or any part of the Project Operations, or the compliance by

Project Co with instructions given by HMQ, in each case in the circumstances referred to in Section 32;

- (v) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any Province Person;
- (vi) **[INTENTIONALLY DELETED]**
- (vii) the inability of Project Co to perform the Project Operations from any DE Full Time Sites as of the Commencement Date as a result of the failure or inability of HMQ to obtain any Personal Property Consent, except to the extent such failure or inability is caused or contributed to by:
  - (A) any act, omission or failure by Project Co or any Project Co Party;
  - (B) any failure by Project Co to perform any obligation of Project Co set forth in the Output Specifications or otherwise provided for in this Project Agreement; or
  - (C) a breach of Project Co's obligations under this Project Agreement; or
- (viii) the failure of the HMQ IT Systems or the Leased HMQ IT Systems to perform in the manner required to permit Project Co to satisfy the Output Specifications, except to the extent:
  - (A) any such failure to perform is caused, or contributed to, by Project Co or any Project Co Party;
  - (B) any such failure to perform was contemplated in the Output Specifications or was otherwise provided for in this Project Agreement; or
  - (C) the consequences of any such failure to perform would have been prevented by the proper performance of Project Co's obligations under this Project Agreement; or
- (ix) **[INTENTIONALLY DELETED]**

#### **42.2 Consequences of an Excusing Cause**

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Section 42.3):
  - (i) any failure by Project Co to perform, and any poor performance of, any affected Project Operations shall not constitute a breach of this Project Agreement by Project Co, no Performance Penalty shall accrue in respect of such failure and Project Co shall be

relieved of its obligations to perform such Project Operations for the duration and to the extent prevented by such Excusing Cause;

- (ii) such Excusing Cause shall be taken into account in measuring the performance of any affected Project Operations, which shall be operated as though the relevant Project Operations had been performed free from such adverse interference;
- (iii) such Excusing Cause shall be taken into account in implementing the provisions of the Output Specifications, which shall be implemented as though any Performance Penalty resulting from such interference had not occurred, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
- (iv) this Section 42.2 shall not limit HMQ's entitlement to reimbursement pursuant to Section 32.4.
- (v) in the case of an Excusing Cause referred to in Sections 42.1(a)(ii), 42.1(a)(vi), 42.1(a)(vii) and 42.1(a)(viii), HMQ shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any such Excusing Cause, including costs arising from any steps taken to cure or mitigate against such event, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure;
- (vi) in the case of an Excusing Cause referred to in Section 42.1(a)(iii), HMQ shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any such Excusing Cause for each DE Premises affected by such Excusing Cause, that are in excess of \$[REDACTED] (index linked), provided however that in the event that the aggregate of such Direct Costs incurred by Project Co for all DE Premises affected by such Excusing Cause exceed \$[REDACTED] (index linked), then HMQ shall reimburse Project Co for all such incremental Direct Costs incurred by Project Co as a result thereof that are in excess of \$[REDACTED] (index linked). In each case, such Direct Costs shall include costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure; and
- (vii) in the case of an Excusing Cause referred to in Section 42.1(a)(v), HMQ shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of such Excusing Cause that are in excess of \$[REDACTED] (index linked) and such reimbursement shall include costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure.

**42.3 Mitigation**

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

**42.4 [INTENTIONALLY DELETED]****43. RELIEF EVENTS****43.1 Definition**

- (a) For the purposes of this Project Agreement, "**Relief Event**" means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
  - (ii) failure by any utility company, local authority or other like body to perform works or provide services;
  - (iii) accidental damage to any of the Service Delivery Points;
  - (iv) a widespread failure or shortage of power, fuel or transport affecting Project Co and persons other than Project Co;
  - (v) blockade or embargo falling short of Force Majeure; or
  - (vi) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the delivery of DE Services in general; provided, however, that a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.7;

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

#### 43.2 Consequences of a Relief Event

(a) Subject to Section 43.3:

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

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, HMQ shall be entitled to impose Performance Penalties in accordance with Schedule 20 – Payment Mechanism until such time as Project Co demonstrates to HMQ that it is satisfying in full its obligations set forth in Section 43.3, at which time, HMQ shall:

- (A) impose Performance Penalties in connection with such Relief Event only during the time period calculated from the date of the occurrence of such Relief Event to the date that Project Co has demonstrated to HMQ that Project Co has satisfied in full its obligations set forth in Section 43.3 with respect to such Relief Event; and
- (B) then suspend the imposition of any further Performance Penalties in connection with such Relief Event for so long as Project Co is satisfying its obligations set forth in Section 43.3.

Any Performance Penalties payable by Project Co as a result of Relief Events referred to in Sections 43.1(a)(v) or 43.1(a)(vi) shall not, in the aggregate, be an amount that would prevent Project Co from satisfying in full the Senior Debt Service Amount. The assessment by HMQ of Performance Penalties payable by Project Co as a result of the occurrence of a Relief Event shall not be taken into account for the purposes of determining whether there has occurred a Project Co Event of Default as contemplated by Sections 45.1(a)(vii), 45.1(a)(viii) or 45.1(a)(ix).

- (b) When Project Co has demonstrated to HMQ that Project Co has satisfied in full its obligations set forth in Section 43.3 with respect to a Relief Event, HMQ shall:
  - (i) provide written notice to Project Co as soon as practicable confirming HMQ's satisfaction in this regard;

- (ii) reimburse or credit to Project Co the amount equal to the Performance Penalties, if any, received by HMQ in connection with such Relief Event during the time period from the date that Project Co has demonstrated to HMQ that Project Co has satisfied in full its obligations set forth in Section 43.3 with respect to such Relief Event and the date of receipt by Project Co of the written notice from HMQ contemplated in Section 43.2(b)(i).
- (c) Subject to Section 49, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 43.

### 43.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 43.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 43.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 43.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 43.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.
- (g) Notwithstanding Section 43.2(a), the Performance Penalties in respect of Schedule 12, Part 3, item reference 14, shall not apply as a result of the occurrence of a Relief Event.



**43.4 Insured Exposure**

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

**44. FORCE MAJEURE****44.1 Definition**

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
- (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (ii) nuclear or radioactive contamination of any of the Service Delivery Points, unless Project Co or any Project Co Party is the source or cause of the contamination;
  - (iii) chemical or biological contamination of any of the Service Delivery Points from any event referred to in Section 44.1(a)(i);
  - (iv) pressure waves caused by devices traveling at supersonic speeds; or
  - (v) labour disputes, strikes or lockouts (including lockouts decreed or recommended for its members by a recognized contractor’s association of which Project Co is a member or to which Project Co is otherwise bound);

provided that such inability to perform all or a material part of its obligations under this Project Agreement does not arise by reason of:

- (A) [REDACTED];
- (B) lack or insufficiency of funds or failure to pay of monies or provide required security;
- (C) the negligence, wilful misconduct or deliberate acts of wrongdoing of or by Project Co or any Project Co Party, if Project Co is the Party claiming Force Majeure, or the negligence, wilful misconduct or deliberate acts of wrongdoing of or by HMQ or any HMQ Party, if HMQ is the Party claiming Force Majeure; or

- (D) any breach, default or contravention of any provision of this Agreement by Project Co or any Project Co Party, if Project Co is the Party claiming Force Majeure, or any breach, default or contravention of any provision of this Agreement by HMQ or any HMQ Party, if HMQ is the Party claiming Force Majeure.

#### 44.2 Consequences of Force Majeure

- (a) Subject to Sections 44.2(c) and 44.3, the Party entitled to claim that a Force Majeure has occurred shall be relieved from liability under this Project Agreement to the extent that, by reason of such Force Majeure, it is not able to perform its obligations under this Project Agreement, provided that, notwithstanding such Force Majeure, there shall be no relief to Project Co from any of its payment obligations pursuant to this Project Agreement, including Project Co's obligation to pay the Monthly Concession Payment and to pay the applicable Performance Penalties as set forth in Section 44.2(c) .
- (b) Subject to Section 49, Project Co's sole right in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 44.
- (c) In the event that Project Co is the Party entitled to claim that a Force Majeure has occurred, then Project Co shall be relieved of its payment obligations with respect to Performance Penalties that arise as a direct consequence of such Force Majeure, other than those Performance Penalties listed below:
  - (i) the Performance Penalties in respect of Schedule 12, Part 3, item reference 1;
  - (ii) the Performance Penalties in respect of Schedule 12, Part 3, item reference 2;
  - (iii) the Performance Penalties in respect of Schedule 12, Part 3, item reference 4;
  - (iv) the Performance Penalties in respect of Schedule 12, Part 3, item reference 6;
  - (v) the Performance Penalties in respect of Schedule 12, Part 3, item reference 10; and
  - (vi) the Performance Penalties in respect of Schedule 12, Part 3, item reference 13.

#### 44.3 Mitigation and Process

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

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 44.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 44.3.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available including the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 44.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 44.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **44.4 Insured Exposure**

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

#### **44.5 Modifications**

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

#### **44.6 Force Majeure Bridge Payment**

- (a) For the purposes of this Project Agreement, the following terms have the following meanings:

“**Contract Year 10**” means the Contract Year beginning September 1, 2022 and ending August 31, 2023.

**“Contract Year 10 Revenue”** means the DE Service Revenue for Contract Year 10.

**“Employee Benefit Plan”** means a benefit plan, programme, agreement or arrangement (whether written or unwritten, formal or informal) maintained or contributed to, required to be contributed to, or provided by, Project Co or any Project Co Party for the benefit of any of its employees, former employees, or their respective dependents or beneficiaries including, all bonus, deferred compensation, incentive compensation, share purchase, share option, stock appreciation, phantom stock, savings, profit sharing, severance or termination pay, health or other medical, life, disability or other insurance (whether insured or self-insured), supplementary unemployment benefit, pension, retirement and supplementary retirement plans, programmes, agreements or arrangements.

**“Force Majeure Bridge Payment”** means the amount equal to the difference between: (a) the Permitted Expenses for Contract Year 10; and (b) the Contract Year 10 Revenue, provided that if such amount is a negative amount, such amount shall be deemed to be \$0.00.

**“Permitted Expenses”** means, for each of applicable Contract Year, the amount equal to the aggregate of the following expenses paid by Project Co or any Project Co Party, as applicable, in respect of Project Operations during such Contract Year:

- (i) the Monthly Concession Payments payable to HMQ pursuant to Section 4.6 of the Project Agreement and Section 2 of Part B of Schedule 20 – Payment Mechanism;
- (ii) the Senior Debt Service Amount;
- (iii) the aggregate amount of all payments made by Project Co under, pursuant to or in connection with the leases, subleases or other agreements permitting occupancy of premises regarding the DE Premises;
- (iv) the aggregate amount of all reasonable amounts paid to employees of Project Co or any Project Co Party in respect of salaries and wages for work or services rendered or provided to Project Co or to such Project Co Party, as applicable, regarding the Project Operations;
- (v) the aggregate amount of all reasonable employer payments, contributions, premiums and like payments remitted or paid by Project Co or by any Project Co Party to or in respect of Employee Benefit Plans (excluding for certainty all income taxes remitted); and
- (vi) the aggregate amount of all reasonable payments made by Project Co or by any Project Co Party to third party persons in respect of utilities and in respect of telephone and internet access services, in each case, used to perform the Project Operations;

provided that the aggregate of the expenses set forth in Sections 44.6(a)(iii), 44.6(a)(iv), 44.6(a)(v) and 44.6(a)(vi) shall not exceed the corresponding monthly amounts (pro-rated, as necessary) for the items as referred to in such sections during such Contract Year as set forth in

the Financial Model.HMQ shall pay Project Co the Force Majeure Bridge Payment after the Expiry Date as set forth in this Section 44.6, if each of the following conditions is satisfied:

- (vii) an event of Force Majeure occurs at any time on or after September 1, 2022;
- (viii) during the time period beginning on September 1, 2022 and ending on August 31, 2023, no Project Co Event of Default has occurred and is continuing;
- (ix) HMQ is satisfied, acting reasonably, that Project Co has taken commercially reasonable steps to mitigate the consequences of such event of Force Majeure as the same relates to the Permitted Expenses for Contract Year 10; and
- (x) the Price-Weighted Volume Percentage Decline caused by the Force Majeure is equal to or greater than [REDACTED] per cent ([REDACTED]%).

For the purposes of this Section 44.6, the term “**Price-Weighted Volumes Percentage Decline**” means the number calculated in accordance with the following formula expressed as a percentage relative to 1.0:

$$\frac{\sum((P_{\text{Current}} \times V_{\text{Average}}) - (P_{\text{Current}} \times V_{\text{Realized}}))}{\sum(P_{\text{Current}} \times V_{\text{Average}})}$$

Where:

$\sum$  is the aggregate of all DE Services.

$P_{\text{Current}}$  is the DE Service Fee for the corresponding DE Service effective as at the beginning of Contract Year 10.

$V_{\text{Average}}$  is the simple average actual historical volume for the corresponding DE Service for the three (3) immediate preceding Contract Years during which an event of Force Majeure did not occur or which were not materially affected by an event of Force Majeure that occurred in the immediately preceding Contract Year; or if such period of time cannot be established due to events of Force Majeure occurring,  $V_{\text{Average}}$  shall be the simple average actual historical volume for the corresponding DE Service for all previous Contract Years.

$V_{\text{Realized}}$  is the realized volume for the corresponding DE Service during Contract Year 10.

For certainty, HMQ shall not be obligated to make the Force Majeure Bridge Payment in the event that the Project Agreement is terminated prior to the Expiry Date.

- (b) In respect of the Force Majeure Bridge Payment to be made pursuant to Section 44.60, as soon as practicable after, and, in any event, within 30 days after, the Expiry Date, Project Co shall give to HMQ an invoice with respect to the Force Majeure Bridge Payment and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount thereof including a detailed breakdown of each of the individual items comprising the Force Majeure Bridge Payment.

- (c) HMQ shall pay to Project Co the Force Majeure Bridge Payment within 60 days after the latter of:
  - (i) the date on which HMQ receives the invoice from Project Co regarding the Force Majeure Bridge Payment; and
  - (ii) the date on which HMQ receives the sufficient supporting evidence required pursuant to Section 44.6(b).
- (d) The costs and expenses to be taken into account in the calculation of the Force Majeure Bridge Payment shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been reasonably and properly incurred.
- (e) If the calculation of the Force Majeure Bridge Payment is disputed, then any undisputed amount shall be paid in accordance with this Section 44.6 and the disputed amount shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.
- (f) HMQ shall be entitled to rely on a certificate of the Lenders' Agent as conclusive evidence as to confirming receipt of payment or payments in respect of the Senior Debt Service Amount.

#### 44.7 Force Majeure Backlog Payment

- (a) For the purposes of this Project Agreement, the following terms have the following meanings:

**"Backlog Profit Amount"** means the amount equal to difference between: (a) the Backlog Revenue; and (b) the Incremental Backlog Expense, provided that if such amount is a negative number, such amount shall be deemed to be \$0.00.

**"Backlog Reference Period"** means the period of time being the first three (3) Contract Years subsequent to Contract Year 1 during which time an event of Force Majeure did not occur, or which were not materially affected by an event of Force Majeure that occurred in the immediately preceding Contract Year, and if such period of time cannot be established due to events of Force Majeure occurring, such period of time being the number of Contract Years subsequent to Contract Year 1.

**"Backlog Revenue"** means the amount equal to the difference between: (a) the DE Service Revenue for Contract Year 1; and (b) the average DE Service Revenue for the Contract Years forming the Backlog Reference Period, provided that if such amount is a negative number, such amount shall be deemed to be \$0.00.

**"Contract Year 1"** means the Contract Year beginning September 1, 2013 and ending August 31, 2014.

**"Force Majeure Backlog Payment"** means the amount equal to the Backlog Profit Amount together with interest thereon at a rate per annum equal to the Prime Rate per annum, calculated monthly in arrears on the last day of each successive month starting from the Commencement

Date up to and including the date of payment. For the purpose of the *Interest Act* (Canada), the yearly rate of interest applicable to amounts owing in respect of the Force Majeure Backlog Payment will be calculated on the basis of a 365 day year.

**“Incremental Backlog Expense”** means the amount equal to difference between the aggregate amount of all reasonable amounts paid to employees of Project Co or any Project Co Party in respect of salaries and wages for work or services rendered or provided to Project Co or to such Project Co Party, as applicable, regarding the Project Operations together with all reasonable costs and expenses validly incurred and paid by Project Co or any Project Co Party in respect of work or services rendered or provided to Project Co or any Project Co Party, as applicable, directly attributable to increase in volumes of the applicable DE Service for: (a) Contract Year 1; and (b) the Contract Years forming the Backlog Reference Period, provided that if such amount is a negative number, such amount shall be deemed to be \$0.00.0.

**“Prime Rate”** means the rate of interest per annum quoted by Royal Bank of Canada from time to time as its reference rate for Canadian Dollar demand loans to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.

- (b) Project Co shall pay HMQ the Force Majeure Backlog Payment as set forth in this Section 44.7, if an event of Force Majeure occurs at any time during the period beginning after February 28, 2013 and ending on August 31, 2013.
- (c) In respect of the Force Majeure Backlog Payment to be made pursuant to Section 44.7(a), as soon as practicable after, and, in any event, prior to November 30 of the last Contract Year that establishes the Backlog Reference Period, Project Co shall give to HMQ a written statement setting forth the Force Majeure Backlog Payment together with sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount thereof including a detailed breakdown of each of the individual items comprising or used to determine the Force Majeure Backlog Payment.
- (d) Project Co shall pay to HMQ the Force Majeure Backlog Payment no later than December 31 of the last Contract Year that establishes the Backlog Reference Period.
- (e) The costs and expenses to be taken into account in the calculation of the Force Majeure Backlog Payment shall only be such costs and expenses as are reasonable and proper in quantum and shall have been reasonably and properly incurred.
- (f) If the calculation of the Force Majeure Backlog Payment is disputed then any undisputed amount shall be paid in accordance with this Section 44.6 and the disputed amount shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.

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

- (a) Subject to Section 45.1(b), for the purposes of this Project Agreement, “Project Co Event of Default” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by HMQ of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, HMQ, an HMQ Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the Governmental Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors’ obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 45.1(a)(i)(A);
    - (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co’s ability to perform its obligations under this Project Agreement;
    - (C) if any execution, sequestration, extent, 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 shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 45.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 45.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, the Governmental Activities or that may compromise (1) the reputation or integrity of HMQ and/or, any HMQ Party or the nature of the procedures and requirements for the issuance of Driver's Licenses in the Province of Ontario, or (2) the ability of HMQ to conduct its business, so as to negatively affect public perception of those procedures and requirements, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from HMQ;
- (iii) Project Co committing a breach of Sections 52 or 53 or a breach of its obligations under this Project Agreement (other than a breach that is referred to in Sections 45.1(a)(i) and 45.1(a)(ii) inclusive or Sections 45.1(a)(iv) to 45.1(a)(vi) inclusive) which has or will have a material adverse effect on the Governmental Activities, other than where such breach is a consequence of a breach by HMQ of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on HMQ and the Governmental Activities;
    - (II) put forward, within 5 Business Days of receipt of notice of such breach from HMQ, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
    - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
  - (B) upon Project Co failing to comply with any of the provisions of Section 45.1(a)(iii)(A):

- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on HMQ and the Governmental Activities;
- (II) Project Co shall, within 3 Business Days after notice from HMQ, submit a plan and schedule, which HMQ shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 45.1(a)(iii)(B), or HMQ, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (iv) Project Co ceasing to perform any Project Operations in accordance with this Project Agreement which is necessary for the Governmental Activities, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement;
- (v) Project Co failing to comply with Sections 59.1 or 59.3;
- (vi) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 59.4;
- (vii) Project Co being assessed a total of \$[REDACTED] or more in respect of Performance Penalties (index-linked) in any rolling 3 Contract Months;
- (viii) Project Co being assessed a total of \$[REDACTED] or more in respect of Performance Penalties (index-linked) in any rolling 6 Contract Months;
- (ix) Project Co being assessed a total of \$[REDACTED] or more in respect of Performance Penalties (index-linked) in any rolling 12 Contract Months;
- (x) Project Co failing to pay any sum or sums due to HMQ under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 – Dispute Resolution Procedure, and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from HMQ;
- (xi) Project Co failing to comply with Section 60;
- (xii) Project Co failing to comply with Section 7.3 or Schedule 28 – Refinancing;
- (xiii) Project Co failing to obtain, deliver and/or maintain any guarantee, bond, letter of credit, security or insurance required to be obtained, delivered and/or maintained by or on behalf of Project Co pursuant to this Project Agreement or any such guarantee, bond, letter of

credit, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement, and:

- (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a guarantee, bond, letter of credit or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xiv) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xv) Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by HMQ of its obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or HMQ (an “**H&S Conviction**”) provided however that:
- (A) an H&S Conviction against Project Co, a Project Co Party or HMQ shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 59.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to HMQ, in its sole discretion; and
  - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 45.1(a)(xv), HMQ shall:
    - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
    - (II) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or
- (xvi) Project Co failing to comply with Section 28.1;
- (xvii) Project Co failing to comply with its obligations set forth in Sections 7.3(a), 7.3(c), 7.3(f) or 7.3(g) of the Collection Account Agreement; or

(xviii) Project Co failing to comply with [REDACTED]

- (b) HMQ shall not exercise any rights under this Section 45 (except its rights under Section 45.1(a)(i)) as a result of a Project Co Event of Default referred to in Sections 45.1(a)(vii) and 45.1(a)(viii) until the day following the Commencement Date. For greater certainty, if HMQ is prevented from exercising any rights under this Section 45 by the terms of the immediately preceding sentence, then, notwithstanding the passage of time or any intervening event (including that HMQ may have exercised its rights under Section 45.5(a)), on and after the day following the Commencement Date, HMQ may exercise any such rights.

#### **45.2 Notification of Occurrence**

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

#### **45.3 Right to Termination**

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

#### **45.4 Remedy Provisions**

- (a) In the case of a Project Co Event of Default referred to in Sections 45.1(a)(i)(B), 45.1(a)(i)(C), 45.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 45.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 45.1(a)(i)(B) or 45.1(a)(i)(C)), 45.1(a)(ii), 45.1(a)(iv), 45.1(a)(v), 45.1(a)(vi) (where the Project Co Event of Default referred to in Section 45.1(a)(vi) is capable of being remedied), 45.1(a)(vii), 45.1(a)(xii), 45.1(a)(xiii) (where the Project Co Event of Default referred to in Section 45.1(a)(xiii) is not in respect of insurance), 45.1(a)(xiv), 45.1(a)(xv) or 45.1(a)(xvi), HMQ shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:
- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to HMQ, acting reasonably; and

- (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 45.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, HMQ shall have 5 Business Days from receipt of the same within which to notify Project Co that HMQ does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which HMQ shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 45.4(a), occurs and:
  - (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on HMQ and the Governmental Activities or the availability of the Project Operations; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 45.4(a)(i); or
  - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 45.4(a) and (b); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 45.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,then HMQ may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.
- (d) Notwithstanding that HMQ may give the notice referred to in Section 45.4(a), and without prejudice to the other rights of HMQ in this Section 45.4, at any time during which a Project Co Event of Default is continuing, HMQ may, at Project Co's risk and expense, take such steps as HMQ considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 45.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and HMQ shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

**45.5 HMQ's Costs**

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

**45.6 No other Rights to Terminate**

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

**46. HMQ DEFAULT****46.1 HMQ Events of Default**

- (a) For the purposes of this Project Agreement, "HMQ Event of Default" means any one or more of the following events or circumstances:
- (i) HMQ failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by HMQ in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED], and such failure continues for 90 days from receipt by HMQ of a notice of non-payment from or on behalf of Project Co;
  - (ii) HMQ committing a material breach of its obligations under Section 4.2 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; and
  - (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement, including without limitation a revocation of the delegation by the Lieutenant Governor in council pursuant to Section 7 of the *Improving Customer Service For Road Users Act, 2001* (Ontario) (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences and Approvals shall not constitute an "act of any Governmental Authority").

**46.2 Project Co's Options**

- (a) On the occurrence of an HMQ Event of Default and while the same is continuing, Project Co may give notice to HMQ of the occurrence of such HMQ Event of Default, which notice will specify

the details thereof, and, at Project Co's option and without prejudice to its other rights and remedies under this Project Agreement, may:

- (i) suspend performance of the Project Operations until such time as HMQ has remedied such HMQ Event of Default; or
- (ii) if such HMQ Event of Default has not been remedied within 30 days of receipt by HMQ of notice of the occurrence of such HMQ Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

#### **46.3 Project Co's Costs**

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

#### **46.4 No Other Rights to Terminate**

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

### **47. RELIEF EVENT AND NON-DEFAULT TERMINATION**

#### **47.1 Termination for Relief Event**

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

**47.2 Termination for Force Majeure**

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

**47.3 Termination for Convenience**

- (a) HMQ shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co.
- (b) In the event of notice being given by HMQ in accordance with this Section 47.3, HMQ shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the IT Services, or any part or parts of the IT Services, or any element of the IT Services, where such IT Services have not yet been commenced.

**47.4 Automatic Expiry on Expiry Date**

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

**48. EFFECT OF TERMINATION****48.1 Termination**

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

**48.2 Continued Effect - No Waiver**

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



**48.3 Continuing Performance**

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

**48.4 Effect of Notice of Termination**

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 47.4 Project Co shall comply with Section 50.2 and Part II of Schedule 24 – Transition Procedures.

**48.5 Ownership of Information**

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

**48.6 Provision in Subcontracts**

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

**48.7 Transitional Arrangements**

- (a) On the termination of this Project Agreement for any reason and for a reasonable period both before and after any such termination, Project Co shall, subject to the continued performance of Project Operations pursuant to Sections 3.2 and 3.3 of Schedule 23 – Compensation on Termination if applicable, comply with the provisions of Section 50.2 of the Project Agreement and Part II of Schedule 24 – Transition Procedures.
- (b) If HMQ wishes to conduct a competition or procurement at any time prior to the Expiry Date with a view to entering into an agreement following the expiry or termination of this Project Agreement, for the provision of services, which may or may not be the same as, or similar to, the Project Operations, Project Co shall cooperate with HMQ fully in such competition process, including by:

- (i) providing any information which HMQ may reasonably require to conduct such competition, including all information contained in any asset management system maintained by Project Co not otherwise transferred to HMQ; and
- (ii) assisting HMQ or any HMQ Party by allowing any or all participants in such competition process unrestricted access to any part of the Service Delivery Points, as applicable.

**48.8 Termination upon Aforesaid Transfer**

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

**48.9 Survival**

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
  - (i) all representations, warranties and indemnities under this Project Agreement; and
  - (ii) Sections 1.2, 1.3, 4.10, 4.11, 5, 6, 7, 32, 36, 37, 41, 44, 45.5, 46.3, 47.4, 48, 49, 50, 51, 52, 53, 56, 57, 58, 60.3, 61.1, 64.4, 64.8, 64.9, 64.10, 64.11 and 64.12 of this Project Agreement, Schedule 23 – Compensation on Termination, Part II of Schedule 24 – Transition Procedures, Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, and any other provisions of this Project Agreement which are expressed to survive termination and which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 47.3(a).

**49. COMPENSATION ON TERMINATION****49.1 Compensation on Termination**

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

**49.2 Full and Final Settlement**

- (a) Except as otherwise provided in Section 49.2(b), any compensation paid pursuant to this Section 49, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and HMQ, and each shall be released from all liability to the other in relation to any

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

- (b) Section 49.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the HMQ Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be;
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 48.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
  - (iii) any amount owing to HMQ in relation to:
    - (A) taxes or tax withholdings, including workers' compensation levies;
    - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
    - (C) any order made by a court under the *Civil Remedies Act*, S.O. 2001, c.28; and
    - (D) any fraud or other criminal offence committed against HMQ.

## **50. TRANSITION PROCEDURE**

### **50.1 Front-End Transition**

- (a) Project Co and HMQ shall each comply with the requirements of Part 1 of Schedule 24 – Transition Procedures.

### **50.2 Expiry Transition**

- (a) Project Co and HMQ shall each comply with the requirements of Part 2 of Schedule 24 – Transition Procedures.

**51. INTELLECTUAL PROPERTY****51.1 Ownership**

- (a) HMQ shall own all right, title and interest in and to all Project Data and Intellectual Property developed by Project Co and/or a Project Co Party in connection with the performance of the Project Operations, other than the Project Co Background IP (the “**HMQ IP Assets**”).
- (b) Project Co hereby assigns and transfers and shall cause each Project Co Party to assign and transfer to HMQ all of Project Co’s and all Project Co Parties’ right, title and interest in and to each HMQ IP Asset from and after its creation by Project Co and/or Project Co Parties throughout the world.
- (c) Project Co agrees to cooperate fully and to cause each Project Co Party to cooperate fully at all times with respect to signing such documents and doing such acts and other things as may be reasonably requested by HMQ to confirm such transfer of HMQ IP Assets and associated waiver of moral rights, effective at or after the time an HMQ IP Asset is created.
- (d) HMQ acknowledges that Project Co and/or any Project Co Party, as applicable, retains exclusive ownership rights in and to all Project Co Background IP. Notwithstanding the foregoing, to the extent that any:
  - (i) Project Co Background IP is incorporated or embedded into, or made part of, any HMQ IP Assets; or
  - (ii) HMQ IP Assets are incorporated or embedded into, or made part of, any Project Co Background IP,

Project Co hereby grants, and shall cause all Project Co Parties, as applicable, to grant, to HMQ an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use, copy, maintain, modify, enhance and/or make any derivative works thereof (either directly or through any one or more sublicenses authorizing others to exercise any or all of the rights of HMQ in respect of the Project Co Background IP on its behalf) of such Project Co Background IP in connection with any and all of the Approved Purposes.

**51.2 Representation and Warranty**

- (a) Project Co represents, warrants and covenants to HMQ and agrees that:
  - (i) Project Co shall assist HMQ to maintain and protect the legal rights of HMQ in and to any and all HMQ IP Assets with such assistance being at HMQ’s sole cost and expense, except in respect of any assistance required in connection with a claim arising under Section 51.6 for which Project Co is required to indemnify HMQ, in which case the terms of Section 51.6 shall apply;

- (ii) Project Co has and shall have the right to execute, and shall ensure that the Project Co Parties have the right to execute, all assignments of each HMQ IP Asset contemplated under this Section 51;
- (iii) Project Co shall and Project Co shall ensure that all Project Co Parties waive all moral rights in and to the HMQ IP Assets developed in connection with the DE Services; and
- (iv) the HMQ IP Assets do not and shall not infringe, and are not and shall not be misappropriation of, any third party Intellectual Property Rights in Canada, and, as of Commercial Close, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the HMQ IP Assets.

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

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, HMQ free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to HMQ on the aforesaid terms of this Section 51.3(a), for any and all of the Approved Purposes.

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

- (a) Project Co shall, at Project Co's cost:
  - (i) where any Intellectual Property Rights are or become vested in the DE Services Provider, obtain the grant of an equivalent licence to that referred to in Section 51.1(d), provided that such licence may, in respect of the DE Services Provider's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and
  - (ii) where any Intellectual Property Rights are or become vested in a third party (other than the DE Services Provider), obtain the grant of an equivalent licence to that referred to in Section 51.1(d), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 51.3 and Section 51.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

### **51.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 51 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of HMQ, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable HMQ or its nominee to access and otherwise use such data, materials and documents for the Approved Purposes.

- (b) Without limiting the obligations of Project Co under Section 51.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 51 in accordance with Good Industry Practice. Project Co shall submit to the HMQ Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and HMQ shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the HMQ Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the HMQ Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 51.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

## 51.6 Claims

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

## 51.7 HMQ Trade-Marks

- (a) Unless otherwise agreed by HMQ, Project Co (or a Project Co Party to whom the rights of Project Co under the Trade Mark License Agreement have been properly assigned pursuant to the terms of the Trade-Mark License Agreement) shall only use the trade-marks DRIVETEST and DRIVETEST Design in association with the Project Operations and at all times in accordance with the terms of the Trade-Mark License Agreement.
- (b) Project Co shall not:
- (i) use any HMQ Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to HMQ and Project Co, each acting reasonably; or
  - (ii) use the names or any identifying logos or otherwise of HMQ or the HMQ Representative in any advertising or permit them so to be used except with the prior written consent of HMQ.

**51.8 Confidential Information**

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

**51.9 Government Use of Documents**

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

**51.10 Restrictions**

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither Project Co nor any Project Co Party shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on the HMQ IP Assets, the Intellectual Property Rights (other than Project Co Background IP), the Intellectual Property of HMQ or the Confidential Information of HMQ, 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 HMQ IP Assets, the Intellectual Property Rights (other than Project Co Background IP), the Intellectual Property of HMQ or the Confidential Information of HMQ, 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 HMQ IP Assets, the Intellectual Property Rights (other than Project Co Background IP), the Intellectual Property of HMQ or the Confidential Information of HMQ, including the Output Specifications.

**51.11 Escrow**

On or prior to January 1, 2015 or at such earlier time as may be requested by HMQ acting reasonably, Project Co, HMQ and a third party escrow agent acceptable to HMQ shall enter into a source code escrow agreement (in a form acceptable to HMQ) pursuant to which, *inter alia*, Project Co will agree to place in escrow for the benefit of HMQ all of the source code materials relating to the Project Co Background IP licensed under Section 51.1(d). For certainty, the form of escrow agreement to be entered into by Project Co, HMQ and the third party escrow agent shall also provide that Project Co shall have an ongoing obligation throughout the Project Term to

update the source code materials relating to the Project Co Background IP that are then in escrow with most recent version of the source code materials for all Project Co Background IP used in connection with the Project Operations on no less than a biannual basis.

## **52. CONFIDENTIALITY/COMMUNICATIONS**

### **52.1 Disclosure**

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

### **52.2 Redaction**

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



determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

### **52.3 Disclosure to Government**

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

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

- (a) The Parties acknowledge and agree that FIPPA applies to HMQ, and that HMQ is required to fully comply with FIPPA.
- (b) The Parties further acknowledge and agree that FIPPA shall apply to and govern Personal Information and Project Data, to the extent such Personal Information and Project Data are:
  - (i) processed by Project Co in connection with the performance of the Project Operations; or
  - (ii) provided or made available to Project Co by HMQ.

For the purposes of FIPPA, the control of all such Personal Information and Project Data shall at all times reside with HMQ.

- (c) HMQ shall, within the time periods provided in FIPPA for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for Confidential Information that relates to Project Co (or any Project Co Party) or of HMQ's intention to voluntarily release any information or documents which contain Confidential Information that relates to Project Co (or any Project Co Party).

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

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 52 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.

- (b) Project Co may:
- (i) disclose in confidence to the Lenders and prospective Lenders and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
  - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that HMQ may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of HMQ's alternate procurement and financing policies and framework or in connection with any competition or procurement to be carried out by HMQ at any time prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may be similar to the Project Operations. HMQ will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care. In addition to the foregoing, Project Co shall and shall cause each Project Co Party and members of their respective staffs who have access to any Confidential Information to execute and deliver to Project Co a Security Statement in the form of Schedule 33 – Security Statement.

## 52.6 Exceptions

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

- (iii) the information is a matter of public record or in the public domain;
- (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
- (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to HMQ upon a termination of this Project Agreement, pursuant to Section 48 or is otherwise required by HMQ for the purposes of performing (or having performed) the Project Operations, including any operations or services the same as, or similar to, the Project Operations; or
- (ix) the information would not be exempt from disclosure under FIPPA.

**52.7 Survival of Confidentiality**

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

**52.8 Communications Protocol**

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

**52.9 Fraud Procedures**

- (a) Project Co shall comply with the provisions of Schedule 36 – Business Integrity and Fraud Management.

**53. PERSONAL INFORMATION****53.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.

- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of HMQ and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by HMQ.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Operations.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 53.
- (e) Project Co shall allow HMQ on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 53 including the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of HMQ with respect to Project Co or each Project Co Party's handling of Personal Information.
- (f) Project Co shall not subcontract or delegate to any third party any of the Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of HMQ and without obtaining written contractual commitments of such third party substantially the same as those of this Section 53.

### 53.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information. In addition to the foregoing, Project Co shall and shall cause each Project Co Party and members of their respective staffs who have access to any Personal Information to execute and deliver to Project Co a Security Statement in the form of Schedule 33 – Security Statement.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees that require access to such Personal Information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 53.

- (c) Project Co shall ensure that at no time will any Personal Information be stored or retained outside Ontario for any time period.
- (d) If Project Co becomes compelled by Applicable Law to disclose Personal Information, or if Project Co becomes aware that any Project Co Party has become compelled by Applicable Law to disclose Personal Information, Project Co shall promptly provide HMQ with notice, so that HMQ may seek a protective order or other appropriate relief.
- (e) Upon termination of this Project Agreement or upon request of HMQ, whichever comes first, Project Co shall immediately cease all use of and return to HMQ or, at the direction of HMQ, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (f) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to 53.2(e), 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.
- (g) Project Co shall immediately inform HMQ of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 53.
- (h) HMQ may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to HMQ, acting reasonably, requiring such person to keep Personal Information confidential.

### **53.3 Personal Information**

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to HMQ and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) Project Co shall, in the manner and at the locations specified by HMQ promptly post such notices as HMQ requires in connection with HMQ's obligations under section 39(2) of FIPPA.
- (c) To the extent of any conflict or inconsistency between this Section 53 and any other provision of the Project Agreement, this Section 53 shall prevail.
- (d) The obligations in this Section 53 shall survive the termination of this Project Agreement.

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

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

**54.2 No Relief from Liabilities and Obligations**

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

**55. NOTIFIABLE INCIDENTS****55.1 Notifiable Incidents**

- (a) Project Co shall comply with the provisions of Schedule 34 – Notifiable Incidents.

**56. INDEMNITIES****56.1 Project Co Indemnities to HMQ**

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

- (i) any physical loss of or damage to all or any part of the Service Delivery Points, or to any equipment, assets or other property related thereto;
- (ii) the death or personal injury of any person;
- (iii) any physical loss of or damage to property or assets of any third party; or
- (iv) any other loss or damage of any third party,

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

- (v) the breach of this Project Agreement by HMQ; or
- (vi) any act or omission of HMQ or any Province Person.

- (b) Project Co shall indemnify and save harmless HMQ and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless HMQ and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences and Approvals in accordance with this Project Agreement, except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by HMQ or by any act or omission of HMQ or any HMQ Party.
- (d) Without prejudice to HMQ's rights under Section 44.7 and any other rights under this Project Agreement, if HMQ exercises its step-in rights under the DE Service Provider's Direct Agreement, Project Co shall indemnify HMQ for all obligations of Project Co assumed by HMQ under the DE Services Contract, as the case may be, and for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights.
- (e) Project Co shall indemnify HMQ for damages suffered or incurred on account of: (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by HMQ, or from the date identified (if any) applicable to an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

## **56.2 HMQ Indemnities to Project Co**

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

involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and

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

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

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

### **56.3 Conduct of Claims**

- (a) This Section 56.3 shall apply to the conduct of claims, made by a third person against a Party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the Party giving the indemnity is referred to as the "Indemnifier".
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 56, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.



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

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

#### **56.4 Mitigation - Indemnity Claims**

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

### **57. LIMITS ON LIABILITY**

#### **57.1 Indirect Losses**

- (a) Without prejudice to the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim

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

- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, “Indirect Losses”).

### **57.2 No Liability in Tort**

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

### **57.3 Remedies**

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

### **57.4 Maximum Liability**

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

**58. DISPUTE RESOLUTION PROCEDURE**

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

**59. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL****59.1 Project Co Assignment**

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the DE Services Contract or any agreement entered into in connection with this Project Agreement without the prior written consent of HMQ, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities: (i) are inconsistent with HMQ's role (in HMQ's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of HMQ and/or any HMQ Party; or (iii) are inconsistent with the nature of the procedures and requirements for the issuance of Driver's Licences in the Province of Ontario, so as to negatively affect public perception of those procedures and requirements.
- (b) Section 59.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if HMQ so requires.

**59.2 HMQ Assignment**

- (a) HMQ may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and HMQ are parties:
  - (i) as may be required to comply with Applicable Law;
  - (ii) to any minister of HMQ;
  - (iii) to an agency of HMQ having the legal capacity, power, authority and ability to become a party to and to perform the obligations of HMQ under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of HMQ's obligations hereunder and under the other Project Documents to which HMQ is a party in respect of the period from and after the assignment; and
  - (iv) in circumstances other than those described in Sections 59.2(a)(i) to 59.2(a)(iii), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of HMQ hereunder and under any agreement in connection with this Project Agreement to which Project Co and HMQ are parties in respect of the period from and after the assignment.

- (b) HMQ shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 59.2.

### **59.3 Subcontractors**

- (a) Project Co shall not subcontract any interest in this Project Agreement, the DE Services Contract, and shall not permit the DE Services Provider to subcontract any interest in the DE Services Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities:
  - (i) are inconsistent with HMQ's role (in HMQ's reasonable opinion) in the Province of Ontario;
  - (ii) may compromise the reputation or integrity of HMQ and/or any HMQ Party; or (iii) are inconsistent with the nature of the procedures and requirements for the issuance of Driver's Licences in the Province of Ontario, so as to negatively affect public perception of those procedures and requirements.
- (b) Project Co shall not terminate, agree to the termination of or replace the DE Services Provider unless Project Co has complied with Sections 7.2(a), 59.3(c) and 59.3(d) or received the prior written consent of HMQ.
- (c) Subject to Section 59.3(d), if any DE Services 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 DE Services Provider shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to HMQ's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the DE Services Provider that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the agreement entered into by the person so replaced, unless any material variations are approved by HMQ, acting reasonably.
- (e) In the event of a termination or replacement of the DE Services Provider by Project Co in accordance with the terms of the Project Agreement (including pursuant to Section 59.3(b) of the Project Agreement), HMQ agrees that it shall:
  - (i) provide to Project Co all information that is then in the possession of HMQ as Project Co may reasonably require; and
  - (ii) execute and deliver any instrument as may be reasonably required,in each case in order to effect the assignment or novation of any Subcontracts or other instruments to Project Co or its nominee as a result of the termination or replacement of the DE Services Provider.
- (f) Without limiting Section 59.3(e), HMQ agrees that upon a replacement of the DE Services Provider that is permitted pursuant to this Section 59.3, HMQ shall use all reasonable efforts to

expeditiously obtain the approval of the Minister pursuant to the *Improving Customer Service for Road Users Act* (Ontario) in order to give effect to the exercise of such rights and the new subdelegation of Project Co's delegated powers to the full extent of such delegated powers.

#### 59.4 Changes in Ownership and Control

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

**59.5 HMQ Due Diligence**

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

**60. PROHIBITED ACTS****60.1 Definition**

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

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

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

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

## 60.2 Remedies

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



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

**60.3 Permitted Payments**

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

**60.4 Notification**

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

**60.5 Replacement of Project Co Party**

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

**61. NOTICES****61.1 Notices to Parties**

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

If to Project Co:

[REDACTED]

Attn.:

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave  
Building B, 3rd Floor

Downsview, Ontario M3M 1J8

Attn.: [REDACTED]

## **61.2 Notices to Representatives**

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

If to Project Co Representative:

[REDACTED]

Telephone: [REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

If to HMQ Representative:

Service Delivery, Partnership Branch  
1201 Wilson Ave.  
Building B, 3<sup>rd</sup> Floor  
Downsview, Ontario M3M 1J8

Telephone: [REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

## **61.3 Facsimile**

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

## **61.4 Change of Address**

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

## **61.5 Deemed Receipt of Notices**

- (a) Subject to Sections 61.5(b), 61.5(c) and 61.5(d):

- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 61.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

#### **61.6 Service on HMQ**

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

### **62. EMERGENCY MATTERS**

#### **62.1 Emergency**

- (a) If, in respect of any Emergency, HMQ notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by HMQ or any other statutory body, then Project Co shall, subject to Schedule 22 – Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application).

### **63. HMQ DESIGNATE**

#### **63.1 Right to Designate**

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario or any other person as may be designated by any member of the Executive Council of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Project Agreement (including

review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engagement in discussions, consultations and meetings with Project Co, submission of notices and documentation to HMQ, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. HMQ shall advise Project Co in writing of any designation hereunder. The rights and obligations of the Parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 63.1.

## **64. GENERAL**

### **64.1 Amendments**

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

### **64.2 Waiver**

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

### **64.3 Relationship Between the Parties**

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

any relationship whatsoever between HMQ and any representative or employee of Project Co or the Project Co Parties.

(b) The Parties further agree that:

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

#### **64.4 General Duty to Mitigate**

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

#### **64.5 Actual Knowledge**

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

**64.6 Entire Agreement**

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

**64.7 No Reliance**

- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
  - (ii) this Section 64.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

**64.8 Severability**

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

**64.9 Enurement**

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

**64.10 Governing Law and Jurisdiction**

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with

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

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

#### **64.11 Cumulative Remedies**

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

#### **64.12 Further Assurance**

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

#### **64.13 Costs**

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

#### **64.14 Language of Agreement**

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

#### **64.15 Proof of Authority**

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

**64.16 Counterparts**

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

**64.17 Province Persons as Third Party Beneficiaries**

- (a) The provisions of Sections 6.1, 6.2(a), 6.3(a), 8.1(c), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 21.1, 36.2(e), 51.6(a), 56.1, and 57.2(a) and each other provision of this Project Agreement which is expressed to be for the benefit of a Province Person or an HMQ Party, as applicable, are:
- (i) intended for the benefit of each Province Person, or HMQ Party, as applicable and, if so set out in the relevant Section, each Province Person's or HMQ Party's, as applicable, directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, in respect of each Province Person, the "Province Person Third Party Beneficiaries", and in respect of each HMQ Party, the "HMQ Third Party Beneficiaries"); and
  - (ii) in addition to, and not in substitution for, any other rights that the Province Person Third Party Beneficiaries may have in contract or otherwise.
- (b) HMQ shall hold the rights and benefits of Sections 6.1, 6.2(a), 6.3(a), 8.1(c), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 21.1, 36.2(e), 51.6(a), 56.1, and 57.2(a) and each other provision of this Project Agreement which is to the benefit of a Province Person or an HMQ Party, as applicable, in trust for and on behalf of the Province Person Third Party Beneficiaries or HMQ Third Party Beneficiaries, as applicable, and HMQ hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Province Person Third Party Beneficiaries or HMQ Third Party Beneficiaries, as applicable.

**64.18 Copyright Notice**

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

*[SIGNATURE PAGE IMMEDIATELY FOLLOWS]*



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

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**, as represented by the Minister of  
Transportation

Per:

---

Name: Glen Murray  
Title: Minister of Transportation

For Information Purposes Only

**[REDACTED]**

Per:

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

Title:

I/We have authority to bind the Corporation

For Information Purposes Only

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

- 1. Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 “**Account Trustee**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.2 “**Actual Relevant Insurance Cost**” has the meaning given in Section 6.1(a) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.3 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.4 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.5 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners as the case may be.
- 1.6 “**Ancillary Documents**” means the DE Services Contract, [REDACTED], and the Performance Letter of Credit.
- 1.7 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (b) any Authority Requirement; and
  - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, HMQ, any HMQ Party or any Province Person.
- 1.8 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.9 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.10 “**Approved Purposes**” means:
- (a) the performance of:
    - (i) Governmental Activities (and operations relating to such performance);
    - (ii) the obligations of HMQ under the Project Agreement;

- (iii) any activities required to be undertaken by HMQ or any other person in order to:
    - (A) carry out a fair and commercially reasonable procurement process, as may be determined by HMQ in its sole discretion, whether specific to the Project Operations or more broadly in the event of a larger procurement process; or
    - (B) conduct a competition at any time prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Project Operations, following the expiry of this Project Agreement; and/or
  - (iv) any other activities of HMQ or a Governmental Authority in connection with the Project Operations;
  - (b) following termination of the Project Agreement, the performance of any operations the same as, or similar to, the Project Operations; and
  - (c) the development by HMQ of driver's licensing standards, policies, requirements and procedures relating to the issuance of Driver's Licences in the Province of Ontario.
- 1.11 **[Intentionally Deleted]**
- 1.12 **[Intentionally Deleted]**
- 1.13 **[Intentionally Deleted]**
- 1.14 **"Assigned HMQ Contracts"** means, collectively, those contracts, licenses and leases assigned and transferred to Project Co pursuant to the Lease and Licensing Agreement.
- 1.15 **"Authority Requirements"** means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.16 **"Back End Transition Procedure"** means the procedure for Back End Transition described in Schedule 24 – Transition Procedures.
- 1.17 **"Background Information"** means any and all drawings, reports, studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by HMQ or any HMQ Party, or which was obtained from or through any other sources prior to Commercial Close.
- 1.18 **"Bank"** has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.19 **"Base Case Equity IRR"** means **[REDACTED]**%.
- 1.20 **"Base Relevant Insurance Cost"** has the meaning given in Section 6.1(b) of Schedule 25 – Insurance and Performance Security Requirements.

- 1.21 **“Beneficiary”** has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.22 **“Business Case Proposal”** has the meaning given in Schedule 7 – Service Delivery Points.
- 1.23 **“Business Day”** means any day other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.24 **“Canadian GAAP”** shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.25 **“Capital Expenditure”** means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.26 **“Change in Control”** means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
  - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person.
- 1.27 **“Change in Law”** means the occurrence after Commercial Close of:
- (a) the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law; or
  - (b) any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario
- 1.28 **“Change in Ownership”** means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.29 **“Change of Authorization Event”** has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.30 **“Change of Authorization Notice”** has the meaning given in Schedule 30 – Insurance Trust Agreement.

- 1.31 “**Class**” means a class of Driver’s Licence prescribed for Motor Vehicles under the regulations under the *Highway Traffic Act* (Ontario).
- 1.32 “**Collection Account Agreement**” means the collective account agreement between HMQ, Project Co, the Lenders’ Agent and the Collection Trustee in the form set out in Appendix B to Schedule 25 – Insurance and Performance Security Requirements.
- 1.33 “**Collection Trustee**” means the person appointed as collection trustee pursuant to the Collection Account Agreement and as may be permitted pursuant to the Project Agreement.
- 1.34 “**Collective Agreement**” means the collective agreement regarding DE Services between [REDACTED] and the Union, which collective agreement is to expire on October 1, 2019, as such collective agreement may be amended, supplemented, varied, restated, replaced or otherwise modified from time to time.
- 1.35 “**Commencement Date**” means 12:00 a.m. on September 1, 2013.
- 1.36 “**Commercial Close**” means the date of the Project Agreement.
- 1.37 “**Communication Channel**” has the meaning given in Schedule 18 – Communications Protocol.
- 1.38 “**Compensation Date**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.39 “**Compensation Event**” means any of the circumstances described in Section 41.1(a) of the Project Agreement.
- 1.40 “**Complaint**” has the meaning given in Schedule 18 – Communications Protocol.
- 1.41 “**Complete Driving Instructor’s Fee**” means the fee in paragraph 1 and 1.1 of Section 8(1) of Ontario Regulation 473/07 made under the *Highway Traffic Act* (Ontario).
- 1.42 “**Complex Enquiries**” has the meaning given in Schedule 18 – Communications Protocol.
- 1.43 “**Compliance Report**” has the meaning given in Schedule 14 – Reporting Obligations.
- 1.44 “**Confidant**” has the meaning given in Section 52.6(a)(i) of the Project Agreement.
- 1.45 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after Commercial Close.
- 1.46 “**Conflict of Interest**” means engaging in any conduct, activity, business or undertaking that would result in an actual or potential conflict of interest (as determined by HMQ in its sole discretion) in the performance of the Project Operations pursuant to this Project Agreement.
- 1.47 “**Contract Month**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.48 “**Contract Year**” means the period of 12 calendar months that commences on September 1<sup>st</sup> of each calendar year and ends on the next ensuing August 31<sup>st</sup>, provided that:

- (a) the first Contract Year shall be such period that commences on the first day of the first Contract Month and ends on the next ensuing August 31<sup>st</sup>; and
  - (b) the final Contract Year shall be such period that commences on September 1<sup>st</sup> that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.49 **“CPI”** means CPI (Ontario index), as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, which most closely resembles such index.
- 1.50 **[REDACTED]**
- 1.51 **“Current Service Provider”** means **[REDACTED]**
- 1.52 **“Custodian”** means the person appointed as Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.53 **“Custody Agreement”** means the custody agreement between Project Co, HMQ, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 – Custody Agreement.
- 1.54 **“Customer Service Agent”** means Inside Examiner.
- 1.55 **“Customer-Facing Project Operations”** means those elements of the Project Operations (i) to which the general public has direct access or (ii) which are delivered directly to the general public, including, without limitation, the DE Services, the Telephone Service Channel and the Website.
- 1.56 **“DABS Manual”** means the Distributed Automated Booking System (DABS) policy manual as at February 2008 issued by the Ministry.
- 1.57 **“DE Inside Manual”** means the Driver Examination – Inside manual as at May 2012 issued by the Ministry.
- 1.58 **“DE Existing Premises”** means the DE Full Time Sites and the Travel Points.
- 1.59 **“DE Full Time Sites”** means those DE Premises listed in Part II(A) of Schedule 7 – Service Delivery Points.
- 1.60 **“DE Oakville Premises”** means that DE Full Time Site currently located at 2035 Cornwall Rd. Oakville, ON L6J 7S2.
- 1.61 **“Default Notice”** has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.62 **“Default Period”** has the meaning given in Schedule 30 – Insurance Trust Agreement.

- 1.63 “**DE Mandatory Replacement Premises**” has the meaning given in Schedule 7 – Service Delivery Points.
- 1.64 “**DE Multi-Use Location**” means a premises or location approved by HMQ from which the Project Operations are performed by Project Co or an Affiliate of Project Co and at which other products and services are offered for sale, other than:
- (a) liquor (as that term is defined in the *Liquor Licence Act* (Ontario));
  - (b) sexually explicit products or services;
  - (c) tobacco or tobacco-related products; or
  - (d) products or services that HMQ considers to be incompatible with the promotion of safe driving as determined by HMQ, in its sole discretion.
- 1.65 “**DE Output Specifications**” means those specifications and requirements as set out in Schedule 15.
- 1.66 “**DE Premises**” means, collectively, the DE Existing Premises, the DE Mandatory Replacement Premises, the DE Multi-Use Locations and the DE Replacement Premises.
- 1.67 “**DE Replacement Premises**” means:
- (a) any new premises (including any Project Co Owned Premises); or
  - (b) any replacements of the DE Existing Premises or the DE Mandatory Replacement Premises,
- at or from which Project Co is authorized in accordance with this Project Agreement to use as premises from which any part of the Project Operations are performed.
- 1.68 “**DE Road Test Manual**” means the Driver Examination Road Test Manual and Road Test Marking Guide as at May 2012 issued by the Ministry.
- 1.69 “**DE Service Fee**” means any service fee in respect of DE Services set forth in:
- (a) Section 1 to Section 10, inclusive, of Appendix A of Schedule 20 – Payment Mechanism; or
  - (b) Section 1 to Section 7, inclusive, of Appendix B of Schedule 20 – Payment Mechanism.
- 1.70 “**DE Service Provider’s Direct Agreement**” means the direct agreement between HMQ, Project Co, and the DE Services Provider in the form set out in Schedule 5 – DE Service Provider’s Direct Agreement.
- 1.71 “**DE Service Revenue**” has the meaning given in Schedule 23 — Compensation on Termination.



- 1.72 “**DE Services**” means the driver examination services for an individual requesting or presenting himself or herself to Project Co, including vision, knowledge and road tests and air brake endorsement practical tests, required to obtain, renew, maintain, upgrade or reinstate a Driver’s Licence of any Class or an air brake endorsement, that are set out in Schedule 15 – DE Output Specifications, and the related services, products and transactions that are set out in Schedule 15 – DE Output Specifications.
- 1.73 **[Intentionally Deleted]**
- 1.74 “**DE Services Contract**” means the agreement for the provision of DE Services between Project Co and the DE Services Provider dated on or about Financial Close.
- 1.75 “**DE Services Provider**” means **[REDACTED]**, engaged by Project Co to perform the DE Services and any substitute DE services contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.76 “**DE Specific Change in Law**” means:
- (a) any Change in Law or binding agreement entered into by a Governmental Authority, in each case occurring after Commercial Close, that allows a person who has been issued and holds a valid Driver’s Licence from a jurisdiction other than the Province of Ontario to replace or exchange such Driver’s Licence for a valid Driver’s Licence issued in the Province of Ontario without the requirement of such Person to pay for the DE Services required or mandated to complete and effect such replacement or exchange;
  - (b) any Change in Law that expressly:
    - (i) increases the age at which persons over the age of 65 years old are required or mandated to complete the DE Services regarding eyesight or vision testing or examinations;
    - (ii) sets forth or mandates new delivery procedures which have the effect of increasing the time to complete the DE Services regarding eyesight or vision testing or examinations;
    - (iii) increases the age at which a person has the right or is entitled to apply to have issued to such person a valid Driver’s Licence currently designated as G1;
    - (iv) increases the time period that a person is required to maintain a valid Driver’s Licence currently designated as G1 before such person has the right or is entitled to apply to have issued to such person a valid Driver’s Licence currently designated as G2;
    - (v) increases the time period that a person is required to maintain a valid Driver’s Licence currently designated as G2 before such person has the right or is entitled to apply to have issued to such person a valid Driver’s Licence currently designated as G; or

- (c) any Change in Law that expressly decreases any DE Service Fee chargeable in any Contract Year relative to such DE Service Fee chargeable in the previous Contract Year.
- 1.77 “**DE Temporary Premises**” has the meaning given in Schedule 7 – Service Delivery Points.
- 1.78 “**Direct Cost**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.79 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.80 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of any of the shares, units or equity interests of a person;
  - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person; or
  - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.81 “**Discount Rate**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.82 “**Discretionary Services**” means any service or product offered by Project Co under the Project Agreement (other than the DE Services or the IT Services), such service being subject to the prior written approval of HMQ, in its sole discretion.
- 1.83 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against, or impose additional Taxes which apply specifically and exclusively to:
- (a) the DE Services; or
  - (b) Project Co,
- except that such Change in Law shall not be a Discriminatory Change in Law:
- (c) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);

- (d) solely on the basis that its effect on Project Co is greater than its effect on other persons; or
  - (e) where such Change in Law is a change in Taxes that affects persons generally; or
  - (f) to the extent that such Change in Law results in:
    - (i) any increase or decrease in or to the:
      - (A) DE Service Revenue; or
      - (B) the MVAC Fee; or
      - (C) the HMQ Licensing Fee; or
      - (D) volumes with respect to the Project Operations delivered by Project Co, including road tests, knowledge tests, road test inventory and Telephone Service Channel; or
    - (ii) any imposition of any fee, charge or similar payment to be collected from or payable by the public or any member thereof in connection with or relating to the DE Services.
- 1.84 “**Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.85 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.86 “**Distribution**” has the meaning given in Schedule 28 – Refinancing.
- 1.87 “**Driver Examiner**” means an individual qualified to conduct road tests, air brake endorsement practical tests or other tests in connection with the delivery of the DE Services in the Province of Ontario.
- 1.88 “**Driver Licensing Manual**” means the Driver Licensing Manual as at May 2012 issued by the Ministry.
- 1.89 “**Driver Policy Manual**” means the Driver Policy Manual as at May 2012 issued by the Ministry.
- 1.90 “**Driver’s Licence**” has the meaning given to “driver’s licence” in the *Highway Traffic Act* (Ontario).
- 1.91 “**Driver Transaction**” means the delivery of any driver examination product and/or service, through any Service Delivery Point, from the point where a customer makes contact with Project Co to the point where all steps required in the Policy Manuals have been correctly completed or the customer has ended the transaction.

- 1.92 **“Economic Interest”** means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever.
- 1.93 **“Emergency”** means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
    - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including Province Persons);
    - (ii) causes or may cause damage or harm to property, buildings and/or equipment used in the performance of the Project Operations;
    - (iii) constitutes a hostage situation or state of emergency declared as such by the HMQ Representative or HMQ (acting reasonably);
    - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the conduct of Project Operations, or the conduct of Governmental Activities; or
    - (v) constitutes a period of transition to or from war;and which, in the opinion of HMQ, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or
  - (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.
- 1.94 **“Emergency Service Providers”** means any Police Service, fire fighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the DE Premises from time to time.
- 1.95 **“Employee Termination Payments”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.96 **“Enforcement Event”** has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.97 **“Enquiry”** has the meaning given in Schedule 18 – Communications Protocol.
- 1.98 **“Equipment”** has the meaning given in Schedule 10 – Form of Lease and Licensing Agreement.
- 1.99 **“Equity Capital”** means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders.

- 1.100 **“Equity IRR”** has the meaning given in Schedule 28 – Refinancing.
- 1.101 **“Equity Sale IRR”** means the Equity IRR calculated to the date of any sale of Equity Capital and calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Capital, and the actual timing of payment of all such amounts.
- 1.102 **“Estimate”** has the meaning given in Schedule 22 – Variation Procedure.
- 1.103 **“Estimated Fair Value”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.104 **“Excess Equity Gain”** means an amount equal to the greater of zero and the difference between:
- (a) the amount paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital; and
  - (b) the Threshold Equity Sale Amount.
- 1.105 **“Excusing Cause”** has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.106 **“Exempt Refinancing”** has the meaning given in Schedule 28 – Refinancing.
- 1.107 **“Exercise Date”** has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.108 **“Expert”** has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.109 **“Expiry Date”** means 5:00 p.m. on September 2, 2023.
- 1.110 **“Financial Close”** means the date of execution and delivery of the documents and agreements referred to in Sections 1 and 2 of Schedule 2 – Completion Documents.
- 1.111 **“Financial Close Target Date”** means June 27, 2013 as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.112 **“Financial Model”** means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.113 **“Financial Obligations”** means the obligation to pay any application fees, third party fees, costs or charges (including all applicable taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.114 **“FIPPA”** means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.115 **[REDACTED]**

- 1.116 “**Force Majeure**” has the meaning given in Section 44.1(a) of the Project Agreement.
- 1.117 “**Fraud**” has the meaning given in Schedule 36 – Business Integrity and Fraud Management.
- 1.118 “**General Enquiries**” has the meaning given in Schedule 18 – Communications Protocol.
- 1.119 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.120 “**Governmental Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Project Operations by any Governmental Authority or Emergency Service Provider.
- 1.121 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over HMQ, any aspect of the performance of the Project Agreement, the operation of the Governmental Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.122 “**Government Sensitive Information**” means any information which is designated as such by HMQ from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of HMQ.
- 1.123 “**Grant**” has the meaning given in Section 4.2 of the Project Agreement.
- 1.124 “**GTA**” means the Greater Toronto Area.
- 1.125 “**H&S Conviction**” has the meaning given in Section 45.1(a)(xiv) of the Project Agreement.
- 1.126 “**Hardware**” has the meaning given in Schedule 10 – Form of Lease and Licensing Agreement.
- 1.127 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.128 “**Hedging Agreement**” means an agreement relating to interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.129 “**HMQ**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Transportation.

- 1.130 **“HMQ Default Termination Sum”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.131 **“HMQ Event of Default”** has the meaning given in Section 46.1(a) of the Project Agreement.
- 1.132 **“HMQ Information”** means confidential information of the Government of Ontario, or of third parties and in the possession or control of the Government of Ontario, and any information derived from any of the foregoing.
- 1.133 **“HMQ IP Assets”** has the meaning given in Section 51.1(a) of the Project Agreement.
- 1.134 **“HMQ IT Systems”** means:
- (a) the IT Systems used by HMQ that are in any way directly and indirectly related to the performance of the DE Services and IT Services or the performance by HMQ or Project Co of any of their respective obligations in this Project Agreement, including the Leased HMQ IT Systems;
  - (b) any other IT Systems used by HMQ; and
  - (c) such other IT Systems as HMQ reasonably requests.
- 1.135 **“HMQ Licensing Fee”** has the meaning given in Section 1.5(a) of Schedule 35 – Fee Collection.
- 1.136 **“HMQ Party”** means any of HMQ’s agents, contractors and subcontractors of any tier engaged with respect to the Project Operations and its or their directors, officers and employees, but excluding Project Co and any Project Co Party, and the “HMQ Parties” shall be construed accordingly.
- 1.137 **“HMQ Permits, Licences and Approvals”** means those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations which are the responsibility of HMQ to obtain as set out in Appendix I – Permits, Licences and Approvals to this Schedule 1 – Definitions and Interpretation but, for greater certainty, shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in such appendix but required by the terms of such item set out in such appendix.
- 1.138 **“HMQ Project Documents”** has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.139 **“HMQ Representative”** means the person designated as such by HMQ on or prior to Commercial Close and any permitted replacement.
- 1.140 **“HMQ Software”** has the meaning given in Schedule 10 – Form of Lease and Licensing Agreement.
- 1.141 **“HMQ Third Party Beneficiaries”** has the meaning given in Section 64.17(a)(i) of the Project Agreement.
- 1.142 **“HMQ Trade-Marks”** means any and all Trade-Marks used by HMQ in any manner whatsoever.

- 1.143 “**HMQ Work**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.144 “**Hours of Operation**” has the meaning given in Schedule 15 – DE Output Specifications.
- 1.145 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.146 [REDACTED]
- 1.147 “**ICS Regulation**” means the regulation to be obtained pursuant to section 4 of the *Improving Customer Service for Road Users Act* (Ontario) that, in general, prescribes the powers, duties and responsibilities that are to be delegated by MTO to Project Co under the Project Agreement, specifies Project Co as the legal entity to whom such powers, duties and responsibilities are delegated and specifies the date on which such delegation to Project Co is to become effective.
- 1.148 “**Implied Equity Value**” means the amount paid in consideration of a percentage of Equity Capital divided by the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital.
- 1.149 “**Indebtedness Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.150 “**Indemnifier**” has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.151 “**Indexed DE Services**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.152 “**Indirect Losses**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.153 “**Initial Driving Instructor’s Licence Fee**” means the fee in paragraph 2 of Section 8(1) of Ontario Regulation 473/07 made under the *Highway Traffic Act* (Ontario).
- 1.154 [REDACTED]
- 1.155 [REDACTED]
- 1.156 [REDACTED]
- 1.157 “**Inside Examiner**” means an individual qualified to perform inside operational procedures at a Service Delivery Point.
- 1.158 “**Insurance Cost Differential**” has the meaning given in Section 6.1(c) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.159 “**Insurance Policies**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.160 “**Insurance Proceeds**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.161 “**Insurance Review Date**” has the meaning given in Section 6.1(d) of Schedule 25 – Insurance and Performance Security Requirements.



- 1.162 **“Insurance Review Period”** has the meaning given in Section 6.1(e) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.163 **“Insurance Trust Agreement”** means the insurance trust agreement to be entered into between HMQ, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 – Insurance Trust Agreement.
- 1.164 **“Intellectual Property”** means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models, domain names and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.165 **“Intellectual Property Rights”** means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after Commercial Close created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) any Project Operations; or
  - (b) the Project Agreement.
- 1.166 **“Investigation”** means a criminal record and a fingerprint check, in the manner specified by HMQ from time to time.
- 1.167 **“Invoice Date”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.168 **“IT Output Specifications”** means those specifications and requirements set forth in Schedule 16 – IT Output Specifications.
- 1.169 **“IT Services”** means those services provided by the DE Services Provider in relation to the Project Operations pursuant to the DE Services Contract as set out Schedule 16 – IT Output Specifications.
- 1.170 **“IT Systems”** means, collectively, the HMQ IT Systems, the Leased HMQ IT Systems and all the Project Co IT Systems.
- 1.171 **[REDACTED]**
- 1.172 **“Joint Insurance Cost Report”** has the meaning given in Section 6.2 of Schedule 25 – Insurance and Performance Security Requirements.

- 1.173 “**Junior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.174 “**Junior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.175 “**Key Individual**” means those Project Co Parties listed in Schedule 9 – Key Individuals.
- 1.176 “**Key Performance Indicator**” has the meaning given in Schedule 12 – Key Performance Indicators.
- 1.177 “**LCS**” has the meaning given in Schedule 16 – IT Output Specifications.
- 1.178 “**Lease and Licensing Agreement**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.179 “**Leased HMQ IT Systems**” means:
- (a) the equipment of the HMQ Systems that is listed or referred to in Schedule 10 – Lease and Licensing Agreement – Schedule “A”;
  - (b) the software of the HMQ Systems that is listed or referred to in Schedule 10 – Lease and Licensing Agreement – Schedule “B”;
  - (c) the networks of the HMQ Systems that are listed in Schedule 10 – Lease and Licensing Agreement – Schedule “C”; and
  - (d) the databases of the HMQ Systems that are listed in Schedule 10 – Lease and Licensing Agreement – Schedule “C”.
- 1.180 “**Lease Payment Obligations Agreement (Ottawa)**” means the lease payment agreement to be entered into between HMQ and Project Co and in the form set out in Part I of Appendix C to Schedule 7 – Service Delivery Points.
- 1.181 “**Lease Payment Obligations Agreement (Stoney Creek)**” means the lease payment agreement to be entered into between HMQ and Project Co and in the form set out in Part II of Appendix C to Schedule 7 – Service Delivery Points.
- 1.182 “**Lender Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.183 “**Lenders**” means all or any of the persons who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including, without limitation, the Senior Lenders, and, where the context so permits, prospective financiers or lenders.
- 1.184 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.185 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between HMQ, the Lenders’ Agent and Project Co in the form set out in Schedule 4 – Lenders’ Direct Agreement.

- 1.186 “**Lending Agreements**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.187 [REDACTED]
- 1.188 “**Liquid Market**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.189 “**LRA**” means the *Labour Relations Act, 1995*, SO 1995, s 1, Sch A.
- 1.190 “**Mandatory Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.191 “**Market Value Availability Deduction Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.192 “**MGS Memorandum of Understanding**” means the Memorandum of Understanding from the Security Services and Contingency Planning Branch of the Ministry of Government Services in the form set out in Appendix F to Schedule 2 – Completion Documents.
- 1.193 “**Minister**” means the Minister of Transportation (Ontario) or any appointee succeeding to all or substantially all of the duties of the Minister of Transportation (Ontario).
- 1.194 “**Ministry**” means the Ministry of Transportation in the Province of Ontario.
- 1.195 “**MOI (Ottawa) Lease**” has the meaning given in Schedule 7 – Service Delivery Points.
- 1.196 “**MOI (Stoney Creek) Lease**” has the meaning given in Schedule 7 – Service Delivery Points.
- 1.197 “**Monitoring Notice**” has the meaning given in Section 31.4(a) of the Project Agreement.
- 1.198 “**Monthly Concession Payment**” has the meaning given in Section 4.6 of the Project Agreement.
- 1.199 [REDACTED]
- 1.200 [REDACTED]
- 1.201 “**Motor Vehicle**” has the meaning given to “motor vehicle” in the *Highway Traffic Act* (Ontario).
- 1.202 “**MVAC Fee**” has the meaning given in Schedule 35 – Fee Collection.
- 1.203 “**New Agreement**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.204 “**New Project Co**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.205 “**New Third Party Lease**” means any lease, sublease or other agreement permitting occupancy of premises owned by third parties that is entered into by Project Co on or after Financial Close, in accordance with the Project Agreement, for premises that are used in performing the DE Services.
- 1.206 “**New Website**” has the meaning given in Schedule 16 – IT Output Specifications.

- 1.207 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day quoted by Royal Bank of Canada from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.208 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.209 “**Non-Indexed DE Services**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.210 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.211 “**Notice**” has the meaning given in Section 61.1(a) of the Project Agreement.
- 1.212 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.213 “**Notice Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.214 “**Notifiable Incident**” has the meaning defined in Schedule 34 – Part 3 – Notifiable Incidents.
- 1.215 “**Novation Date**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.216 “**Novation Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.217 “**Officer’s Certificate**” means a written certificate of Project Co, conforming to the requirements specified by HMQ, signed by any one of its Chairman, Chief Executive Officer, President, Chief Financial Officer, any Vice-President, Managing Director, Treasurer or Secretary, and may consist of one or more certificates so executed.
- 1.218 “**Ombudsman**” means the Ombudsman under the *Ombudsman Act* (Ontario) or any person exercising any relevant power of the Ombudsman by virtue of a delegation under the *Ombudsman Act* (Ontario).
- 1.219 “**Operational Term**” means the period commencing on the Commencement Date and expiring at midnight on the Termination Date.
- 1.220 “**Operations Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.221 “**Order**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.222 “**Output Specifications**” means, collectively, those specifications and requirements set forth in Schedule 15 – DE Output Specifications and Schedule 16 – IT Output Specifications.
- 1.223 “**Party**” means either HMQ or Project Co, and “**Parties**” means both HMQ and Project Co.

- 1.224 **“Party Representative”** and **“Party Representatives”** have the meanings given in Schedule 27 – Dispute Resolution Procedure.
- 1.225 **“Payment Commencement Date”** means the first date on which a Monthly Concession Payment is required to be paid by Project Co to HMQ pursuant to Section 4.6 and Schedule 20 – Payment Mechanism.
- 1.226 **“Payment Compensation Amount”** means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by Royal Bank of Canada from time to time as its reference rate for Canadian dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.227 **“Payment Periods”** means the payment periods of one Contract Month (as adjusted in this definition), provided that the last Payment Period in the last year of the Project Term may be a shorter period as a result of the timing of the Payment Commencement Date and the Termination Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.228 **“Performance Failure”** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.229 **“Performance Letter of Credit”** means the performance letter of credit to be delivered by Project Co in accordance with Schedule 37 and in the form set out in Appendix A to Schedule 37.
- 1.230 **“Performance Penalty”** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.231 **“Permits, Licences and Approvals”** means the HMQ Permits, Licences and Approvals and the Project Co Permits, Licences and Approvals.
- 1.232 **“Permitted Borrowing”** means:
- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by HMQ in accordance with Section 1.9 of Schedule 22 – Variation Procedure to the Project Agreement; and
  - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase HMQ’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.233 **“Personal Information”** means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or any Project Co Party other than personal information of the employees of Project Co or the Project Co Parties and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from HMQ in respect of the Project.

- 1.234 **“Personal Property”** means the personal property listed or referred to in the schedules to the Lease and Licensing Agreement.
- 1.235 **“Personal Property Consents”** has the meaning given in Section 12.1(b) of the Project Agreement.
- 1.236 **“Police Service”** means the Royal Canadian Mounted Police, the Ontario Provincial Police and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.237 **“Policy Manuals”** means the DABS Manual, the DE-Inside Manual, the DE Road Test Manual, the Drivers Licensing Manual, the Drivers Policy Manual, and the Facilities Management Workbook.
- 1.238 **“Post Termination DE Service Revenue”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.239 **“Post-Termination DE Service Refund Amount”** is \$[REDACTED] further has the meaning given in Schedule 35 – Fee Collection.
- 1.240 **“Pre-Commencement Date Unearned Revenue”** has the meaning given in Section 1.6(a)(i) of Schedule 35 – Fee Collection.
- 1.241 **“Prohibited Act”** has the meaning given in Section 60.1(a) of the Project Agreement.
- 1.242 **“Prohibited Acts Termination Sum”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.243 **“Project”** has the meaning given in the recitals to the Project Agreement.
- 1.244 **“Project Agreement”** has the meaning given in the recitals to the Project Agreement.
- 1.245 **“Project Agreement Arbitration”** has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.246 **“Project Co”** means [REDACTED] and any successor or permitted assign.
- 1.247 **“Project Co Background IP”** means data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices, source code, Intellectual Property and specifications owned or developed by Project Co or a Project Co Party prior to, or independently from, its engagement hereunder, and any modifications or enhancements thereto; provided, however, that any modifications or enhancements that include, use or require reference to any HMQ Information shall not be considered “Project Co Background IP”.
- 1.248 **“Project Co Event of Default”** has the meaning given in Section 45.1(a) of the Project Agreement.
- 1.249 **“Project Co GP”** means [REDACTED].

- 1.250 **“Project Co Group”** means Project Co and Project Co GP together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co or Project Co GP.
- 1.251 **“Project Co IT Systems”** means all IT Systems, other than the Leased HMQ IT Systems used, directly or indirectly, by Project Co in connection with the performance of the Project Operations, including all:
- (a) administrative systems for human resources, payroll, general ledger, accounts payable and accounts receivable;
  - (b) statistical and performance reporting systems to the extent not used on the HMQ IT Systems as of the Commencement Date; and
  - (c) office product application software and electronic mail systems to be used on such IT Systems.
- 1.252 **“Project Co Owned Premises”** means the premises owned by Project Co from which Project Co performs the Project Operations. If only a part of such premises is used to perform the Project Operations, **“Project Co Owned Premises”** shall mean only that part.
- 1.253 **“Project Co Party”** means:
- (a) the DE Services Provider;
  - (b) any person engaged by Project Co and/or the DE Services Provider from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
  - (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and **“Project Co Parties”** shall be construed accordingly.
- 1.254 **“Project Co Permits, Licences and Approvals”** means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties, needed to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, but other than the HMQ Permits, Licences and Approvals.
- 1.255 **“Project Co Premises”** has the meaning given in Section 21.1(a) of the Project Agreement.
- 1.256 **“Project Co Proposal Extracts”** means the documents attached as Schedule 13 – Project Co Proposal Extracts.

- 1.257 **“Project Co Representative”** means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement, which person shall at all times hold a position within Project Co of “Managing Director” or such designation within Project Co that is equivalent to or more senior to that of “Managing Director”.
- 1.258 **“Project Co Variation Notice”** has the meaning given in Schedule 22 – Variation Procedure.
- 1.259 **“Project Data”** means, with the exception of Personal Information:
- (a) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the performance of the Project Operations; and
  - (b) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement, other than the Background Information and other than Intellectual Property Rights of third parties.
- 1.260 **“Project Documents”** means the Ancillary Documents and the Lending Agreements.
- 1.261 **“Project Insurance Change”** has the meaning given in Section 6.1(f) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.262 **“Project Know-How”** means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by HMQ, whether before or after Commercial Close, which may be connected in any way to:
- (a) the DE Services;
  - (b) the IT Services;
  - (c) any other Project Operations; or
  - (d) the Project Agreement.
- 1.263 **“Project Operations”** means:
- (a) the performance of the DE Services in accordance with Part II of Schedule 15 – DE Output Specifications;
  - (b) the performance of the IT Services in accordance with Part II of Schedule 16 – IT Output Specifications;
  - (c) the performance of any additional services as may be added as part of the Project Operations pursuant to the terms of the Project Agreement; and
  - (d) the performance of all other obligations of Project Co under the Project Agreement,
- except that **“Project Operations”** shall not include:



- (i) the performance of those operations or services set forth Section 4.3(b); or
  - (ii) the operation of the telephone call centre used in connection with the DE Services located in Kingston, Ontario and operated by ServiceOntario.
- 1.264 **“Project Term”** means the period commencing on Commercial Close and expiring at midnight on the Termination Date.
- 1.265 **“Proprietor”** has the meaning given in Section 52.6(a) of the Project Agreement.
- 1.266 **“Protestors”** has the meaning given in Section 9.7 of the Project Agreement.
- 1.267 **“Province Persons”** means HMQ Parties and, while attending in their official capacity at the DE Premises, the following:
- (a) any person to which authority is designated pursuant to Section 63.1 of the Project Agreement and any agents and employees of any such person;
  - (b) contractors of HMQ or of any person to which authority is delegated pursuant to Section 63.1 of the Project Agreement and subcontractors of any tier and its or their directors, officers and employees;
- but excluding:
- Project Co;
- any Project Co Party; and
- [REDACTED], to the extent it or any of its subcontractors of any tier, agents, employees, officers or directors are providing the DE Services from Commercial Close to the Commencement Date.
- 1.268 **“Province Person Third Party Beneficiaries”** has the meaning given in Section 64.17(a)(i) of the Project Agreement.
- 1.269 **“Qualification Criteria”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.270 **“Qualifying Bank”** has the meaning given in Schedule 28 – Refinancing.
- 1.271 **“Qualifying Bank Transaction”** has the meaning given in Schedule 28 – Refinancing.
- 1.272 **“Qualifying Refinancing”** has the meaning given in Schedule 28 – Refinancing.
- 1.273 **“Qualifying Tender”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.274 **“Qualifying Tenderer”** has the meaning given in Schedule 23 – Compensation on Termination.

- 1.275 “**Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.276 “**Quality Plans**” means the Quality Manual, Quality Management Plans and Quality Audit Plans (all as defined in Schedule 11 – Quality Management) to be prepared, submitted and implemented by Project Co in accordance with Schedule 11 – Quality Management.
- 1.277 “**Recognized Authorities**” means a third party authorized by HMQ to administer an HMQ-approved testing program for applicants for (a) any Class of Driver’s Licence except Class G, G1 and G2, and (b) an air brake endorsement.
- 1.278 “**Recovery Amount**” has the meaning given in Section 56.3(g) of the Project Agreement.
- 1.279 “**Rectification**” or “**Rectify**” has the meaning given in Schedule 12 – Key Performance Indicators.
- 1.280 “**Rectification Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.281 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.282 “**Refinancing Financial Model**” has the meaning given in Schedule 28 – Refinancing.
- 1.283 “**Refinancing Gain**” has the meaning given in Schedule 28 – Refinancing.
- 1.284 “**Reimbursement Event**” has the meaning given in Section 32.5(a) of the Project Agreement.
- 1.285 “**Relevant Change in Law**” means a DE Specific Change in Law or a Discriminatory Change in Law.
- 1.286 “**Relevant Insurance**” has the meaning given in Section 6.1(g) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.287 “**Relevant Insurance Inception Date**” has the meaning given in Section 6.1(h) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.288 “**Relief Event**” has the meaning given to it in Section 43.1 of the Project Agreement.
- 1.289 “**Reporting Period**” has the meaning given in Schedule 14 – Reporting Obligations.
- 1.290 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on July 4, 2012.
- 1.291 “**Rescue Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.292 “**Resolve**” or “**Resolution**” has the meaning given in Schedule 12 – Key Performance Indicators.
- 1.293 “**Respond**” has the meaning given in Schedule 12 – Key Performance Indicators.

- 1.294 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
  - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
  - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under Provincial statute, other than offences under the *Highway Traffic Act* or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
  - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
  - (e) is subject to a material claim of HMQ under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in HMQ’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
  - (f) has a material interest in the production of tobacco products.
- 1.295 “**Root Cause Analysis**” has the meaning given in Schedule 34 – Notifiable Incidents.
- 1.296 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.297 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.298 “**Security Statement**” means a Security Statement in the form attached as Schedule 33 – Security Statement, or in such other form as HMQ may give notice of to Project Co or approve from time to time.
- 1.299 “**Senior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.

- 1.300 “**Senior Debt Service Amount**” means, for any period, the scheduled payments of principal and interest payable by Project Co or any Project Co Party to the Senior Lenders with respect to the Senior Debt Amount under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders under the Lending Agreements is subject to the Hedging Agreement(s), interest payable on account of such portion of interest shall be calculated based on the fixed rate payable by Project Co as specified under the Hedging Agreement(s), whether the fixed amounts with respect to such fixed rate are payable to a Senior Lender or the Hedge Provider(s) and all references to interest payable to the Senior Lenders under this Agreement shall be construed accordingly.
- 1.301 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.302 “**Senior Lenders**” means Bank of Montreal and Toronto Dominion Bank, and, for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns.
- 1.303 “**Service Delivery Points**” means, collectively, the DE Premises, the Telephone Service Channel and the Website.
- 1.304 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
  - (b) adversely affect access by Project Co to such markets.
- 1.305 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.306 “**Standstill Period**” means the period of 2 year commencing on the Commencement Date and expiring on the day preceding the second anniversary of the Commencement Date.
- 1.307 “**Step-In Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.308 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the DE Services Provider, any Supplier or consultant, and any subcontractor of any other subcontractor.
- 1.309 “**Subcontractor Losses**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.310 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the DE Services Provider and any other Subcontractor at any tier in relation to any aspect of the Project Operations and including, for certainty, the Third Party Contracts.
- 1.311 “**Subsequent Indebtedness Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.

- 1.312 “**Substitute**” has the meaning given in Schedule 5 – DE Service Provider’s Direct Agreement.
- 1.313 “**Suitable Substitute**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.314 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies, rights (including rights of occupancy) or services as part of, or for, the Project Operations.
- 1.315 “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “Taxes” shall not include the HMQ Taxes.
- 1.316 “**Telephone Service Channel**” means the telephone service channel referred to Schedule 16 – IT Output Specifications.
- 1.317 “**Tender Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.318 “**Tender Process**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.319 “**Tender Process Monitor**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.320 “**Terminated Premises**” has the meaning given in Schedule 7 – Service Delivery Points.
- 1.321 “**Termination Date**” means the earlier of the Expiry Date and such other date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.322 “**Third Party Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.323 “**Third Party Contract**” has the meaning given in Section 9.6(b) of the Project Agreement.
- 1.324 “**Third Party Litigation**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.325 “**Third Party Personal Property**” has the meaning given in Section 12.1(b) of the Project Agreement.
- 1.326 “**Third Party Personal Property Owners**” has the meaning given in Section 12.1(b) of the Project Agreement.
- 1.327 “**Third Party Premises**” means the premises identified as “Third Party” in Part IIA and Part IIB of Schedule 7 – Service Delivery Points as applicable.

- 1.328 **“Threshold Equity Sale Amount”** means the amount which, if paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital, would result in an Implied Equity Value that, if received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.
- 1.329 **“Threshold Equity Sale IRR”** means [REDACTED]%.
- 1.330 **“Trade-mark License Agreement”** means the trade-mark license agreement for the trade-marks DRIVETEST and DRIVETEST Design between HMQ and Project CO to be delivered by Project Co as prescribed by Schedule 2 – Completion Documents, subject to such amendments or modifications thereto as may be required by HMQ, in its sole discretion.
- 1.331 **“Trade-Marks”** means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.332 **“Travel Points”** means those DE Existing Premises identified in Part II(B) of Schedule 7 – Service Delivery Points.
- 1.333 **“Trespassers”** has the meaning given in Section 9.7 of the Project Agreement.
- 1.334 [REDACTED]
- 1.335 **“Unearned Revenue”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.336 **“Uninsurable Event”** means any event which arises directly and solely from an Uninsurable Risk.
- 1.337 **“Uninsurable Risk”** has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements to the Project Agreement.
- 1.338 **“Union”** means [REDACTED].
- 1.339 **“Up-Front Concession Payment”** has the meaning given in Section 4.5 of the Project Agreement.
- 1.340 **“Variation”** has the meaning given in Schedule 22 – Variation Procedure.
- 1.341 **“Variation Confirmation”** has the meaning given in Schedule 22 – Variation Procedure.
- 1.342 **“Variation Directive”** has the meaning given in Schedule 22 – Variation Procedure.
- 1.343 **“Variation Enquiry”** has the meaning given in Schedule 22 – Variation Procedure.
- 1.344 **“Verify”** means the act of reviewing supporting material for a Driver’s Licence application in accordance with HMQ supplied documents including, but not limited to, training materials, bulletins issued by HMQ and identification checking guides.

1.345 [Intentionally Deleted]

1.346 “**Warning Notice**” has the meaning given in 31.3(a) of the Project Agreement.

1.347 “**Website**” means a publicly accessible Internet website for the Service Delivery Points and the DE Services, to be hosted, modified and maintained by Project Co in accordance with the Output Specifications and including the website address, layout and content, any hyper-linkages to other websites, and all related software, tools and documentation, and any Variations (such as updates, upgrades, enhancements, modifications, replacements, new versions or new releases) thereto, including without limitation the New Website.

**2. Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.

2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.

2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.

2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in any Schedule shall be interpreted to include the applicable prefix Section number or other reference.

2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.

2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.

- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1 – Definitions and Interpretation, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.



- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any Province Person shall be construed having regard to the interactive nature of the activities of the Province Persons and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
  - (b) acts or omissions in the ordinary course of the Governmental Activities and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Operations; or
  - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and HMQ's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
  - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "such as" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or HMQ they shall be construed and interpreted as synonymous and to read “Project Co shall” or “HMQ shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:
- $$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_o}$$
- 2.30 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

## **APPENDIX 1**

### **HMQ Permits, Licences and Approvals**

Nil.

For Information Purposes Only

**SCHEDULE 2****COMPLETION DOCUMENTS**

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

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

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

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Custody Agreement;
- 1.3 an original of the Lenders' Direct Agreement;
- 1.4 an original of the DE Service Provider's Direct Agreement;
- 1.5 an original of the Performance Guarantee(s) of Project Co Parent;
- 1.6 an original of the Insurance Trust Agreement;
- 1.7 an original of the MGS Memorandum of Understanding executed by Project Co and the DE Services Provider;
- 1.8 an original of the Collection Account Agreement;
- 1.9 an original of the MOI (Ottawa) Lease;
- 1.10 an original of the MOI (Stoney Creek) Lease;
- 1.11 an original of the Lease and Licensing Agreement;
- 1.12 an original of the Lease Payment Agreement;
- 1.13 an original of the Trade-mark License Agreement;
- 1.14 an original of the Performance Letter of Credit;
- 1.15 an original notice of appointment of the Project Co Representative;

- 1.16 an original of the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;
- 1.17 the Lending Agreements;
- 1.18 the DE Services Contract;
- 1.19 **[Intentionally Deleted];**
- 1.20 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by Project Co in accordance with the Project Agreement;
- 1.21 one (1) printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two (2) copies on CD-Rom;
- 1.22 a certificate of an officer of Project Co certifying:
  - (a) a true copy of the Financial Model audit report dated [REDACTED] prepared by [REDACTED]; and
  - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.23 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.24 a certificate of an officer of the DE Services Provider substantially in the form attached as Appendix B to this Schedule 2;
- 1.25 an original of the opinion from counsel to Project Co, the DE Services Provider and such other Project Co Parties as HMQ may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to HMQ and its counsel; and
- 1.26 such other documents, as the Parties may agree, each acting reasonably.

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

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

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Custody Agreement;
- 2.3 an original of the Lenders' Direct Agreement;

- 2.4 an original of the DE Service Provider's Direct Agreement;
- 2.5 an original of the Insurance Trust Agreement;
- 2.6 an original of the MOI (Ottawa) Lease;
- 2.7 an original of the MOI (Stoney Creek) Lease;
- 2.8 an original of the Lease and Licensing Agreement;
- 2.9 an original of the Lease Payment Agreement;
- 2.10 an original of the Collection Account Agreement;
- 2.11 an original of the Trade-mark Licence Agreement;
- 2.12 an original notice of appointment of the HMQ Representative; and
- 2.13 such other documents as the Parties may agree, each acting reasonably.

**APPENDIX A****FORM OF UNDERTAKING AND ACKNOWLEDGEMENT**

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

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

**RE:** Project Agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 27<sup>th</sup> day of June, 2013 between HMQ, as represented by the Minister, and [REDACTED] (“**Project Co**”)

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1. The undersigned acknowledges that:
  - (a) The Project will proceed as an alternative financing and procurement project and complies with the principles set out in the IPFP Framework.
  - (b) The IPFP Framework establishes five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
    - (i) The public interest is paramount.
    - (ii) Value for money must be demonstrable.
    - (iii) Appropriate public control/ownership must be preserved.
    - (iv) Accountability must be maintained.
    - (v) All processes must be fair, transparent and efficient.
  - (c) Responsibility for the performance and delivery of the DE Services will be preserved and maintained by HMQ.
2. The undersigned undertakes to comply with all Applicable Law in any direction or order issued by HMQ to the extent that the direction or order affects the Project Operations.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

[REDACTED]

by \_\_\_\_\_

Name:

Title:

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

Title:

I/We have authority to bind the partnership



*Signature Page to Undertaking and Acknowledgement*

For Information Purposes Only

## APPENDIX B

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

## Certificate of an Officer of

[●]

(the “Corporation”)

**TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (“HMQ”)**  
**AND TO: THE MINISTER OF TRANSPORTATION**  
**AND TO: CASSELS BROCK & BLACKWELL LLP**  
**AND TO: [COUNSEL TO PROJECT CO]**  
**AND TO: [LENDERS' AGENT]**  
**AND TO: [COUNSEL TO LENDERS]**

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

## 1. Constatting Documents

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

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

Corporation has been granted the right to offer driver examination services in the Province of Ontario;

- (2) a lenders' direct agreement between the Corporation, HMQ and the Lenders' Agent;
- (3) a direct agreement between [REDACTED] (the “**DE Services Provider**”), the Corporation and HMQ; and
- (4) *[NTD: List other documents delivered at Financial Close.]*,

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

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

## 2. Resolutions

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

my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.

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

3. No Breach or Default

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

4. Specimen Signatures

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

NAME	POSITION	SIGNATURE

5. Capital

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

**ISSUED SHARES**

**REGISTERED OWNER**

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 20●.

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

For Information Purposes Only

## APPENDIX C

## FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

Her Majesty The Queen in Right of Ontario  
c/o Ministry of Transportation

●

The Minister of Transportation

●

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

[●]

Dear Sirs/Mesdames:

**Re: Driver Examination Services**

We have acted as counsel to [●] (“**Project Co**”) and [REDACTED] (the “**DE Services Provider**”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into an agreement under which Project Co has been granted the right to offer driver examination services in the Province of Ontario. *[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]*

This opinion is being delivered to Her Majesty The Queen in Right of Ontario (“**HMQ**”), the Minister of Transportation (the “**Minister**”), and their counsel pursuant to [Section 1.21] of Schedule 2 to the Project Agreement made as of [●], 20● between HMQ, as represented by the Minister, and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

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

In our capacity as counsel to Project Co and the DE Services Provider, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [●], 20●):

1. the Project Agreement; and

2. the following project documents (collectively, the “**Implementation Documents**”):
- (a) the DE Services Contract;
  - (b) the Lenders' Direct Agreement;
  - (c) the DE Service Provider's Direct Agreement; and
  - (d) the Lending Agreements.

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

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

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

### **Searches and Reliance**

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

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

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

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

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●],



20● (the “**DE Service Opinion**”), a copy of which has been delivered to you. To the extent that the DE Service Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the DE Service Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

### **Assumptions**

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

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co and the DE Services Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co and the DE Services Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co and the DE Services Provider) to Project Co and the DE Services Provider.

### **Opinions**

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

#### *Incorporation and Existence*

1. Project Co is a corporation incorporated under the laws of [the Province of Ontario] and has not been dissolved.

2. The DE Services Provider is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

*Corporate Power and Capacity*

3. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
4. The DE Services Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

*Corporate Authorization*

5. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
6. The DE Services Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

*Execution and Delivery*

7. Project Co has duly executed and delivered each of the Documents to which it is a party.
8. The DE Services Provider has duly executed and delivered each of the Documents to which it is a party.

*Enforceability*

9. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
10. Each of the Documents to which the DE Services Provider is a party constitutes a legal, valid and binding obligation of the DE Services Provider, enforceable against it in accordance with its terms.

*No Breach or Default*

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

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

#### *Regulatory Approvals*

13. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
14. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the DE Services Provider of the Documents to which it is a party and the performance of its obligations thereunder.

#### **Qualifications**

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

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act*, 2002 (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.

7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act*, 1991 (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act*, 1991 (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the Document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on HMQ for which it would be contrary to public policy to require Project Co to indemnify HMQ or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.

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

Yours very truly,

**[INSERT NAME OF LAW FIRM]**

**APPENDIX D**

**[INTENTIONALLY DELETED]**

For Information Purposes Only

**APPENDIX F**

**FORM OF MGS MEMORANDUM OF UNDERSTANDING**

**Please see attached.**

For Information Purposes Only

**APPENDIX G****TRADE-MARK LICENSE AGREEMENT**

This agreement made as of the 27<sup>th</sup> day of June, 2013.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Transportation.

(“**HMQ**”)

- AND -

[REDACTED]

(“**Licensee**”)

**WHEREAS:**

A. HMQ has adopted the trade-marks **DRIVETEST** and **DRIVETEST & Design** and intends to license the trade marks set out in Schedule “A” to this Agreement (the “**Trade-marks**”);

B. HMQ and Licensee have entered into a Driver Examination Services Project Agreement made as of the 27<sup>th</sup> day of June, 2013 (the “**Project Agreement**”) pursuant to which HMQ has, among other things, granted Licensee the right to perform and deliver certain services (the “**Services**”) which ensures, *inter alia*, that only persons qualified to drive on Ontario roads are issued a Driver’s Licence, thereby ensuring the safe transport of people, goods and services in accordance with the terms thereof;

C. HMQ wishes to license the Licensee to use the Trade-marks to provide the Services pursuant to the Project Agreement;

**NOW THEREFORE** in consideration of the promises and the mutual agreements and covenants contained (the receipt and sufficiency of which are acknowledged by the parties hereto) and for other good and valuable consideration, the parties hereby covenant and agree with each other as follows:

**1. LICENCE TO USE TRADE MARKS****1.1 The Trade-marks**

HMQ hereby grants to the Licensee a non-exclusive, royalty free, non-transferable right to use the Trade-marks solely in conjunction with the provision of the Services in accordance with the terms and provisions of this Agreement. The Licensee is permitted to use the Trade-marks only in association with the Services and not otherwise. The Licensee acknowledges and agrees that the grant under this Agreement shall not be construed as the grant of any right, title or interest in any of the Trade-marks and

that they are the sole and exclusive property of HMQ. The Licensee acknowledges that the license to the Trade-marks provided herein will be revoked and of no further force or effect in the event this Agreement is terminated in accordance with the provisions of Section 2.1 of this Agreement.

## **1.2 Notice**

The Licensee shall use the Trade-marks only in the form and manner as may be prescribed from time to time by HMQ and in association with appropriate trade mark notices as instructed by HMQ from time to time. The following notice is, unless indication is provided to the contrary by HMQ, an example of an acceptable trade mark notice: “DRIVETEST is a trade-mark of Her Majesty the Queen in Right of Ontario, used under license”.

## **1.3 Limitations**

Any and all rights, including rights in and to the Trade-marks, not expressly granted to Licensee in this Agreement are reserved to HMQ and HMQ is and shall remain the sole and exclusive owner of all right, title and interest in and to the Trade-marks and all past, present or future goodwill of the business that is associated with or attributable to the Trade-marks. Without limiting the generality of the foregoing, except as otherwise expressly provided in this Agreement, the Licensee shall not have the right to use, sublicense or otherwise transfer the Trade-marks and shall not use and/or apply to register any trade-marks confusingly similar to the Trade-marks.

## **1.4 Termination and Cessation of Use**

Upon termination of this Agreement, the Licensee shall immediately cease all use of the Trade-marks, and subsequently the Licensee shall refrain from displaying such Trade-marks, including any words, designs, trade-marks or trade-names, or any part of which is similar to or confusing with such Trade-marks. All of Licensee’s promotional materials and any other goods displaying the Trade-marks shall, upon termination, be delivered to HMQ. This paragraph shall survive termination of this Agreement and shall remain in full force and effect at all times after such termination.

## **2. TERM AND TERMINATION**

**2.1** The term of this Agreement shall commence on the Commencement Date and shall expire on the Termination Date

**2.2** [INTENTIONALLY DELETED]

**2.3** After the expiration or termination of this Agreement, neither the Licensee nor its representatives, agents, trustees, administrators, successors or assigns shall have any right to utilize in any manner whatsoever the Trade-marks or to grant or transfer any rights whether by way of assignment or license to any third party in respect thereof.



### **3. BRAND STANDARDS**

#### **3.1 Standards**

The parties hereto agree that the quality and integrity of the Trade-marks shall be upheld and maintained and that the Trade-marks will be used by the Licensee in connection with the Services in accordance with brand and service standards as set out in this Agreement, the Project Agreement and as may be further prescribed from time to time by HMQ. The Licensee agrees that the Trade-marks shall not be used in any fashion that could reasonably be deemed objectionable and acknowledges that it shall take such direction and follow such standards as set by HMQ such that HMQ has control over the character and quality of the Services and the display of the Trade-marks.

#### **3.2 Approval**

HMQ, or its authorized representative or agent, shall have the right to approve in advance all use of its Trade-marks and the provision of the Services by the Licensee pursuant to this Agreement. The Licensee acknowledges that HMQ may withhold approval of Licensee's use of the Trade-marks and the provision of the Services that, in HMQ's reasonable opinion, reflect unfavourably upon HMQ.

#### **3.3 Inspection**

HMQ shall have the right during normal business hours, and with reasonable prior notice to Licensee, to inspect the Licensee's premises pertaining to the use of the Trade-marks and/or the provision of the Services, and any relevant documents, materials and records pertaining to the use of the Trade-marks and the provision of the Services.

### **4. PROTECTION OF THE TRADE MARKS**

**4.1** The Licensee shall refrain from doing or causing to be done, either directly or indirectly, any act which in any way may jeopardize or adversely affect the validity, enforceability or distinctiveness of the Trade-marks or the title of HMQ to the Trade-marks. Upon the reasonable request by HMQ or its authorized representative or agent, the Licensee shall at the expense of HMQ, do all things and execute all documents which may be necessary or desirable to give effect to this Agreement or to better protect the Trade-marks.

**4.2** The parties agree that all provisions of this Agreement are to be interpreted with a view to fully preserving and protecting the validity and enforceability of the Trade-marks in accordance with the laws of Canada. The Licensee will act throughout the term hereof in the best interest of HMQ as owner of the Trade-marks and with a view to preserving and protecting as fully as possible the validity and enforceability of the Trade-marks.

**4.3** This Agreement does not give the Licensee any right, title or interest in the Trade-marks nor any goodwill associated with them, except the right to display the Trade-marks in accordance with the terms hereof.

**4.4** The Licensee shall not depart from the form of the Trade-marks as set out in Schedule "A". In addition, the Trade-marks shall not be used in combination with any other trade mark.

## **5. INFRINGEMENT**

**5.1** The Licensee shall immediately notify HMQ of any act of infringement or passing off involving the Trade-marks or any variation or limitation thereof, of which the Licensee becomes aware. HMQ shall have the sole authority, but not the obligation, to initiate proceedings and to take such steps as HMQ deems necessary, acting reasonably, to restrain the improper or unauthorized use of the Trade-marks, or to settle any dispute with any third party at any time, whether on behalf of HMQ or the Licensee. The Licensee agrees to co-operate and assist HMQ to the fullest extent possible in any proceedings instituted involving the Trade-marks.

**5.2** The Licensee shall immediately notify HMQ of any proceeding involving the Trade-marks that is threatened or instituted by any person against the Licensee and shall allow HMQ, at the sole option of HMQ, to undertake the defence of such proceeding. Should HMQ elect to defend any such proceeding, the Licensee shall fully cooperate with and assist HMQ, and execute the documents, and do the acts, HMQ considers reasonably necessary.

## **6. REPRESENTATIONS AND WARRANTIES BY LICENSEE**

**6.1** The Licensee hereby represents and warrants to HMQ that:

- (a) it has the full right and authority to enter into this Agreement; and
- (b) the entering into of this Agreement by the Licensee does not violate any other obligation or agreement to which the Licensee is a party.

**6.2** During the term of this Agreement and after its expiration or termination for any reason whatsoever, the Licensee will not directly or indirectly:

- (a) Engage in any conduct that would infringe upon or harm the rights of HMQ in or to the Trade-marks;
- (b) Engage in any conduct that would infringe upon or harm the intellectual property rights of third parties;
- (c) Dispute or contest for any reasons whatsoever, the validity, ownership or enforceability of the Trade-marks;
- (d) Attempt to dilute the value of the goodwill attached to the Marks; or
- (e) Counsel, procure or assist anyone to do any of the foregoing.

## **7. INDEMNITY**

**7.1** Licensee will indemnify and hold HMQ and each of its directors, officers, employees, agents and affiliates harmless from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities and expenses (including, without limitation, reasonable attorney's fees and charges) arising out of or relating to any inaccuracy or breach of the Licensee's representations, warranties, covenants or other obligations hereunder or other actions of Licensee which arise, without limitation, out of any other business dealings of Licensee.

**8. MISCELLANEOUS****8.1 Notices**

All notices, documents or other communications required or permitted by this Agreement to be given to a party hereto, shall be in writing and sufficiently given if delivered personally or if sent by prepaid registered or certified mail (return receipt requested) or if transmitted by telecopier or other form of recorded communication tested prior to transmission to such party:

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave  
Building B, 3rd Floor  
Downsview, Ontario M3M 1J8

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Licensee:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

or at such other address as any party to whom such notice is to be given shall have last notified the party giving the same in the manner provided in this Section 8.1. Any notice delivered personally to the party to whom it is addressed as aforesaid shall be deemed to have been given and received on the day it is delivered at such address. Any notice delivered to a party shall be deemed to have been sufficiently delivered personally if delivered to any senior officer of such party. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth (5th) business day next following the date of its mailing provided that during any period of mail service disruption, notice shall be delivered personally or transmitted by telecopier or other form of recorded communication. Any notice transmitted by telecopier or other form of recorded communication as aforesaid shall be deemed given and received on the first (1st) business day following the date of transmission.

**8.2 Time of Essence, Modification**

Time shall be of the essence of this Agreement. Except as contemplated and/or set forth herein, no modification, amendment or supplement to this Agreement or any of its provisions shall be binding upon any party unless made in writing and executed and delivered by duly authorized officers of all parties.

**8.3 Damages**

Licensee acknowledges and agrees that its failure to use the Trade-marks strictly in accordance with the terms of this Agreement will result in immediate and irreparable damages to HMQ and to the rights of any subsequent licensee. Licensee acknowledges and admits that there is no adequate remedy at law for such failure or breach and that in the event of such failure or breach, HMQ shall be entitled to seek equitable relief by way of temporary and permanent injunctions, or by an order for specific performance, and such other further relief as any court with jurisdiction may deem just and proper. Unless otherwise mutually agreed in writing, no departure from, waiver or omission to require compliance with any of the terms hereof, approval or non-approval shall be deemed to authorize any other prior or subsequent departure, waiver, omission, approval or non-approval, as the case may be.

#### **8.4 Waiver**

A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by such other party. The waiver by a party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature.)

#### **8.5 Cumulative Remedies**

Without limiting or restricting in any way any term or provision contained herein, no remedy, right or benefit conferred herein or reserved is intended to be exclusive of any other remedy, right or benefit, but each and every remedy, right and benefit shall be cumulative and shall be in addition to every other remedy, right or benefit given hereunder or now existing or hereafter to exist by applicable law.

#### **8.6 Further Assurances**

Each party shall, with reasonable diligence, perform any act and execute and deliver the document now or hereafter reasonably required by any other party to carry out the terms of this Agreement in accordance with its true intent and meaning.

#### **8.7 Captions and Headings**

The use of captions and headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### **8.8 Assignment**

Licence Co shall have the right to assign, transfer, charge, subcontract or otherwise dispose of any interest in this Agreement to a Project Co Party upon the prior written consent of HMQ and pursuant to the terms of an agreement between Licensee and such Project Co Party containing substantially the same terms and conditions of this Agreement and in a form acceptable to HMQ, acting reasonably. HMQ may assign or otherwise dispose of the benefit of the whole or part of this Agreement to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Licensee of such assignment or disposition. Subject thereto, this Agreement shall enure to the benefit of and be binding

upon the parties and their respective successors (including any successor by reason of amalgamation of any party) and permitted assigns.

### **8.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract.

### **8.10 Force Majeure**

No party shall be responsible for, or be in breach of this Agreement, if it is unable to perform as a result of delays or failures due to any cause beyond its control and not due, in any way, to its own negligence and which cannot be overcome by the exercise of due diligence. Such causes shall include, but shall not be limited to, labour disturbances, riots, fires, earthquakes, floods, storms, lightening, epidemics, wars, disorder, hostilities, expropriation or confiscation of properties, failures or delays by carriers, including, but not limited to, provision of electric and telephone service carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree or law.

### **8.11 Definition**

Unless defined herein or the context otherwise requires, all capitalized words used in this Agreement shall have the same meaning as ascribed to such terms in the Project Agreement. Words importing persons are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

### **8.12 Entire Agreement**

This Agreement and the Project Agreement contains the entire agreement of the parties with respect to the licence granted hereunder. No modification of this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

*[SIGNATURE PAGE IMMEDIATELY FOLLOW]*

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first set forth above:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,**  
as represented by the Minister of Transportation

Per:

---

Name: [REDACTED]  
Title: [REDACTED]

For Information Purposes Only

[REDACTED]

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the partnership

For Information Purposes Only

Schedule “A”

Trade-mark	Application number
<b>DRIVETEST</b>	<b>0915111</b>
<b>DRIVETEST Design</b>	<b>0915110</b>





**APPENDIX H**

**[Intentionally Deleted]**

For Information Purposes Only

**SCHEDULE 3**

**CUSTODY AGREEMENT**

**THIS AGREEMENT** is made as of the 27<sup>th</sup> day of June, 2013

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the  
Minister of Transportation

(“**HMQ**”)

**AND:**

[REDACTED]

(“**Project Co**”)

**AND:**

BNY Trust Company of Canada, a corporation incorporated under the laws of  
Ontario

(the “**Custodian**”)

**AND:**

**BANK OF MONTREAL**, acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

**WHEREAS:**

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

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

## 1. Definitions

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

- (a) **“HMQ Signatory”** has the meaning given in Section 6(a)(i).
- (b) **“Lenders’ Agent”** means Bank of Montreal, acting as agent for and on behalf of the Lenders.
- (c) **“Material”** means hard and electronic copies of the Financial Model.
- (d) **“PA Parties”** means both HMQ and Project Co, and **“PA Party”** means either HMQ or Project Co, as the context requires.
- (e) **“Party”** means HMQ, the Custodian, Project Co or the Lenders’ Agent, and **“Parties”** means HMQ, the Custodian, Project Co and the Lenders’ Agent.
- (f) **“Project Agreement”** means the project agreement made on or about June 27, 2013 between HMQ and Project Co.
- (g) **“Project Co”** means [REDACTED].
- (h) **“Project Co Signatory”** has the meaning given in Section 6(a)(ii).
- (i) **“Step-Out Date”** has the meaning given in Section 14(e).

## 2. Interpretation

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

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms **“Section”** and **“Section”** are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental

Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

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

**3. Project Co's Duties and Warranties**

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

**4. Custodian's Duties**

- (a) The Custodian shall:
  - (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
  - (ii) hold the Material in a safe and secure environment;
  - (iii) inform Project Co and HMQ of the receipt of any copy of the Material;
  - (iv) at all times retain a copy of the latest verified deposit of the Material; and
  - (v) promptly notify Project Co and HMQ if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.

- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

## 5. Payment

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

## 6. Release Events

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

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

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

## 7. Records

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

## 8. Confidentiality

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to HMQ, HMQ shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.

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

## **9. Intellectual Property Rights**

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

## **10. Inspection**

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

## **11. Custodian's Liability**

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or HMQ either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or

omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED] (index-linked).

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



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

## **12. Indemnity**

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and HMQ, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in

connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.

- (b) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement, shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

### **13. Termination**

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days prior written notice to Project Co and HMQ. In that event, Project Co and HMQ shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) HMQ may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of HMQ, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and HMQ.
- (f) This Custody Agreement shall terminate upon release of the Material to HMQ in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.

- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify HMQ of Project Co's request and, failing receipt of any notice of objection from HMQ within 30 days of the receipt of the notice by HMQ, it shall release the Materials to Project Co.
- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

#### 14. Step-In Rights

- (a) The Custodian shall, from time to time:
  - (i) permit HMQ to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
  - (ii) permit Project Co to perform or discharge any obligation of HMQ under this Custody Agreement, where HMQ is in breach of the same; and
  - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to HMQ), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by HMQ pursuant to Section 14(a)(i).
- (c) HMQ consents to the performance or discharge of its obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 14(a)(iii).
- (e) HMQ or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (HMQ or the Lenders' Agent at the same time shall provide a copy of any such notification to the other party) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Custody Agreement.

- (g) The Lenders' Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) of this Custody Agreement and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

## 15. Assignment

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

## 16. Notices

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

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave  
Building B, 3rd Floor  
Downsview, Ontario M3M 1J8

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Custodian:

BNY Trust Company of Canada  
320 Bay Street

11th Floor  
Toronto, ON M5H 4A6

Fax: [REDACTED]

Attn: [REDACTED]

If to the Lenders' Agent:

Bank of Montreal  
First Canadian Place  
100 King Street West - 11th Floor  
Toronto, ON  
M5X 1A1

Attn: [REDACTED]

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

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

#### **17. Right to Designate**

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario or any other person as may be designated by any member of the Executive Council of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Custody Agreement and Project Co, the Custodian and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and are entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co, the Custodian and the Lenders' Agent in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. HMQ shall advise Project Co, the Custodian and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the Parties to this Custody Agreement shall be in no way affected by reason of any such designation. Project Co, the Custodian and the Lenders' Agent acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 17.

#### **18. Amendments**

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

#### **19. Waiver**

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

**20. Relationship Between the Parties**

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

**21. Entire Agreement**

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

**22. Severability**

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

**23. Enurement**

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

**24. Governing Law and Jurisdiction**

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

**25. Further Assurance**

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

**26. Language of Agreement**

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

**27. Proof of Authority**

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

**28. Counterparts**

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

**29. Copyright Notice**

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

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*



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

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**, as represented by the Minister of  
Transportation

Per:

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

Title: [REDACTED]

*Signature Page to Custody Agreement*

[REDACTED]

by

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

Title:

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

Title:

I/We have authority to bind the partnership

*Signature Page to Custody Agreement*

**BNY TRUST COMPANY OF CANADA**

by

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

Title:

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

Title:

I/We have authority to bind the corporation

*Signature Page to Custody Agreement*

**BANK OF MONTREAL**, as agent

by

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

Title:

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

Title:

*Signature Page to Custody Agreement*

## APPENDIX A

## CONDUCT OF CLAIMS

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

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

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

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 27th day of June, 2013

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the  
Minister of Transportation

(“**HMQ**”)

- AND -

BANK OF MONTREAL, acting as agent for and on behalf of the Lenders]

(the “**Lenders' Agent**”)

- AND -

[REDACTED]

(“**Project Co**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement pursuant to which HMQ has, among other things, granted Project Co the right to perform and deliver the DE Services in accordance with the terms thereof.
- B. The provision of the DE Services ensures that only persons qualified to drive on Ontario roads are issued a Driver's Licence, thereby ensuring the safe transport of people, goods and services. The uninterrupted delivery of the DE Services is critical to meet the ongoing demand for driver's licences. An extended interruption of the DE Services would have significant business and social mobility impacts.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the “**Lenders' Direct Agreement**”) with HMQ in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. With a view to ensuring that HMQ is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with HMQ throughout the Project Term.

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

## 1. DEFINITIONS

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

- (a) **"Affiliate"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (b) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
  - (i) the Lenders' Agent, any Lender or any of their Affiliates;
  - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
  - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
  - (iv) an administrator of Project Co;
  - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
  - (vi) any other person approved by HMQ (such approval not to be unreasonably withheld or delayed).
- (c) **"Appointed Representative Notice"** has the meaning given in Section 8(b).
- (d) **"Business Day"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (e) **"DE Services Contract"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (f) **"DE Services Provider"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (g) **"Default Notice"** has the meaning given in Section 7(b)(i).
- (h) **"DE Service Provider's Direct Agreement"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (i) **"Driver's Licence"** has the meaning given to "driver's licence" in the *Highway Traffic Act* (Ontario).



- (j) **“Enforcement Action”** means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (k) **“Enforcement Event”** means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (l) **“Equity Capital”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (m) **“Exercise Date”** has the meaning given in Section 12(b).
- (n) **“Governmental Authority”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (o) **“HMQ Party”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (p) **“HMQ Project Documents”** means the Project Agreement and all other documents to which both HMQ and Project Co are parties pursuant to or in connection with the Project Agreement.
- (q) **“Indebtedness Notice”** has the meaning given in Section 7(b)(ii).
- (r) **“Lender Representative”** means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (s) **“Lenders”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (t) **“Lenders’ Agent”** means Bank of Montreal, acting as agent for and on behalf of the Lenders.
- (u) **“Lenders’ Direct Agreement”** means this lenders’ direct agreement.
- (v) **“Lending Agreements”** has the meaning given in Schedule 23 – Compensation on Termination.
- (w) **“Monitoring Notice”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (x) **“Notice Period”** means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (y) **“Novation Date”** has the meaning given in Section 10(a).
- (z) **“Novation Notice”** has the meaning given in Section 10(a).
- (aa) **“Party”** means any of HMQ, Project Co or the Lenders’ Agent, and **“Parties”** means all of HMQ, Project Co and the Lenders’ Agent.

- (bb) **“Performance Penalty”** has the meaning given in Schedule 20 – Payment Mechanism.
- (cc) **“Project”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (dd) **“Project Agreement”** means the project agreement made on or about June 27, 2013 between HMQ and Project Co.
- (ee) **“Project Co”** means [REDACTED].
- (ff) **“Project Co Event of Default”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (gg) **“Project Co Party”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (hh) **“Project Documents”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (ii) **“Project Operations”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (jj) **“Refinancing”** has the meaning given in Schedule 28 – Refinancing.
- (kk) **“Restricted Person”** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (ll) **“Security”** means the security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- (mm) **“Security Documents”** means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
  - (i) the general security agreement made on or about the date hereof between Project Co and the Lenders’ Agent; and
  - (ii) the DE Service Provider’s Direct Agreement.
- (nn) **“Step-In Date”** means the date on which HMQ receives a Step-In Notice from the Lenders’ Agent.
- (oo) **“Step-In Notice”** means the notice given by the Lenders’ Agent to HMQ pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (pp) **“Step-In Period”** means the period from the Step-In Date up to and including the earlier of:

- (i) the Step-Out Date;
  - (ii) the Termination Date (provided that HMQ has complied with its obligations in Section 7 of this Lenders' Direct Agreement); and
  - (iii) the date that a transfer of Project Co's rights and obligations under the HMQ Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective.
- (qq) **"Step-Out Date"** means the date falling 30 days after the date on which HMQ receives a Step-Out Notice.
- (rr) **"Step-Out Notice"** has the meaning given in Section 9(a).
- (ss) **"Subsequent Indebtedness Notice"** has the meaning given in Section 7(c).
- (tt) **"Suitable Substitute"** means a person, approved in writing by HMQ in accordance with Sections 10(b) and 10(c), which:
- (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the HMQ Project Documents; and
  - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the HMQ Project Documents.
- (uu) **"Termination Date"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (vv) **"Warning Notice"** has the meaning given in Schedule 1 – Definitions and Interpretations.

## 2. INTERPRETATION

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

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

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

- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Lenders’ Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.
- (n) For the purposes of the defined term “HMQ Project Documents”, HMQ includes both: (i) Her Majesty the Queen in Right of Ontario, as represented by the Minister of Transportation; and (ii) Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure.

### 3. CONFLICT OF DOCUMENTS

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

### 4. TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
  - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
  - (ii) the Termination Date (provided that HMQ has complied with its obligations in Section 7 of this Lenders’ Direct Agreement); and
  - (iii) the date that any transfer of Project Co’s rights and obligations under the HMQ Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders’ Agent shall provide notice to HMQ of the date referred to in Section 4(a)(i).

### 5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders’ Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co and HMQ shall not amend or modify the HMQ Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders’ Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially

adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.

- (c) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (d) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (e) HMQ acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to HMQ as at the date of Financial Close.
- (f) HMQ acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the HMQ Project Documents.
- (g) HMQ agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (h) Project Co and the Lenders' Agent hereby authorize and instruct HMQ (and HMQ agrees) to pay all sums payable to Project Co under the Project Agreement to the Proceeds Account, Swift: TDOMCATTOR, Transit:1020, Account: 5435270 and Project Co and HMQ agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, HMQ shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (i) HMQ shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (j) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, HMQ shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.

## 6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify HMQ of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.

- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
  - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
  - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities: (i) are inconsistent with HMQ's role (in HMQ's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of any HMQ and/or any HMQ Party; or (iii) may compromise the procedures and requirements for the issuance of Driver's Licences in the Province of Ontario so as to negatively affect public perception of those procedures and requirements..
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

## 7. TERMINATION OF PROJECT AGREEMENT BY HMQ

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, HMQ may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), HMQ shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
  - (i) HMQ promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
  - (ii) not later than 30 days after the date of a Default Notice, HMQ delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
    - (A) all amounts owed by Project Co to HMQ and any other existing liabilities and unperformed obligations of Project Co to HMQ of which HMQ is aware (having made reasonable enquiry), in each case, as of the date on which HMQ sent the Default Notice; and
    - (B) all amounts which will become owing by Project Co to HMQ and any other liabilities and obligations of Project Co to HMQ of which HMQ is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and

- (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after HMQ sends an Indebtedness Notice but before HMQ receives a Step-In Notice, if HMQ discovers amounts that have become owing by Project Co to HMQ or any other liabilities or obligations of Project Co to HMQ that have come due but which were not included in the Indebtedness Notice, HMQ shall deliver written notice (a **"Subsequent Indebtedness Notice"**) to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, HMQ shall not terminate the Project Agreement on grounds:
  - (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
  - (ii) arising prior to the Step-In Date of which HMQ was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
    - (A) neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
      - (1) arose prior to the Step-In Date;
      - (2) is continuing and capable of being cured; and
      - (3) would have entitled HMQ to terminate the Project Agreement; or
    - (B) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
  - (iii) arising solely in relation to Project Co.
- (e) HMQ shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
  - (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to HMQ on or before the Step-In Date;
  - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
  - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
  - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, any Warning Notices that arose prior to the Step-In Date shall not be taken into



account during the Step-In Period but such Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

## 8. STEP-IN RIGHTS

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

## 9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to HMQ to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
  - (i) the rights and obligations of the Appointed Representative in relation to HMQ under the HMQ Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
  - (ii) HMQ will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the HMQ Project Documents; and

- (iii) the Appointed Representative and HMQ shall be and hereby are released from all obligations and liabilities to one another under the HMQ Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

## 10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:

- (i) after an Enforcement Event has occurred;
- (ii) during the Notice Period; or
- (iii) during the Step-In Period,

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

- (b) HMQ shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. HMQ shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the HMQ Project Documents is approved by HMQ as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by HMQ of the Novation Notice and the date of receipt of any additional information requested by HMQ. For greater certainty, if HMQ fails to respond within such period, HMQ shall be deemed not to have approved the proposed transferee.
- (c) HMQ shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for HMQ to withhold its approval if:
  - (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to HMQ, acting reasonably, in respect of such breaches;
  - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
  - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially

adversely affect the ability of the Suitable Substitute to perform under the HMQ Project Documents or have the effect of increasing any liability of HMQ, whether actual or potential.

- (d) If HMQ withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to HMQ, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and HMQ will be released from their obligations under the HMQ Project Documents to each other, and the Suitable Substitute and HMQ will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against HMQ under the HMQ Project Documents and the rights of HMQ against Project Co under the HMQ Project Documents will be cancelled, and the Suitable Substitute and HMQ will acquire those same rights against each other;
  - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
    - (A) an agreement between HMQ and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
    - (B) an agreement among HMQ, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
  - (iv) any Warning Notices that arose prior to the Novation Date shall be cancelled provided that, where HMQ was entitled to Performance Penalties under Schedule 20 – Payment Mechanism arising from such Warning Notices, and the payment by Project Co to HMQ of such Performance Penalties has not been made or satisfied in full, those outstanding Performance Penalties shall continue to apply and exist, and Project Co's payment obligation to HMQ with respect to such Performance Penalties shall continue to exist; and
  - (v) any subsisting ground for termination by HMQ of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## 11. TRANSFERS

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

## 12. DE SERVICE PROVIDER'S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the DE Service Provider's Direct Agreement, HMQ hereby undertakes that it will not exercise any rights it may have under or arising out of the DE Service Provider's Direct Agreement, except as provided in Sections 12(b) to 12(e) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, HMQ shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the DE Service Provider's Direct Agreement to step into and/or novate the DE Service Contract in accordance with the DE Service Provider's Direct Agreement.
- (c) Following the Exercise Date, HMQ shall not do anything to prejudice the rights which are not transferred to it pursuant to the DE Service Provider's Direct Agreement.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any DE Services Contract and assumed or novated by HMQ pursuant to the DE Service Provider's Direct Agreement.
- (e) Notwithstanding the terms of the DE Service Provider's Direct Agreement and any other provisions of this Section 12, the DE Services Provider (and any guarantor thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the DE Services Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, HMQ shall not, prior to the date on which this Lenders' Direct Agreement terminates:
  - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the DE Service Provider's Direct Agreement (and/or the DE Services Contract) from the DE Services Provider;
  - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the DE Services Provider or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the DE Services Provider; or

- (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the DE Services Provider, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

HMQ agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

### 13. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to HMQ and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, HMQ and the Lenders' Agent, each acting reasonably. HMQ and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) HMQ may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom HMQ assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and HMQ of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lender's Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and HMQ on substantially the same terms as this Lenders' Direct Agreement and Project Co and HMQ shall enter into such new agreement with the assignee. Project Co and HMQ shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

**14. NOTICES**

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

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave.  
Building B, 3<sup>rd</sup> Floor  
Downsview, Ontario M3M 1J8

Fax No.: [REDACTED]

Attn.: [REDACTED]

[REDACTED]

If to Project Co:

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Lenders' Agent:

Bank of Montreal  
First Canadian Place  
100 King Street West - 11th Floor  
Toronto, ON  
M5X 1A1

Attn: [REDACTED]

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

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

## 15. HMQ DESIGNATE

At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Lenders' Direct Agreement and Project Co and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. HMQ shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the parties to this Lenders' Direct Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 15.

## 16. AMENDMENTS

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

## 17. WAIVER

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

## 18. RELATIONSHIP BETWEEN THE PARTIES

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

**19. ENTIRE AGREEMENT**

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

**20. SEVERABILITY**

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

**21. ENUREMENT**

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

**22. GOVERNING LAW AND JURISDICTION**

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

**23. DISPUTE RESOLUTION PROCEDURE**

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

**24. FURTHER ASSURANCE**

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



- (b) Without limiting the scope of Section 24(a), HMQ agrees that upon exercise by the Lenders' Agent of any of the rights set out in this Lenders' Direct Agreement that involve transfer or novation of the Project Agreement to the Lenders' Agent, any Appointed Representative or any Suitable Substitute hereunder, or that would otherwise result in a new delegate or subdelegate, and therefore require a new delegation of the powers of the Minister under the ICSRUA, or approval of a subdelegation of those powers pursuant to ICSRUA, the Minister will use all reasonable efforts to bring forward a regulation amendment under ICSRUA for consideration by Cabinet and its committees, or, in the case of a new subdelegate, to expeditiously provide the approval of the Minister pursuant to ICSRUA, in order to give effect to the exercise of such rights and to give the Lenders' Agent, any Appointed Representative or any Suitable Substitute the same delegated powers as Project Co immediately prior to the exercise of its rights hereunder.
- (c) HMQ agrees that where the Lenders' Agent has exercised any of the rights set out in this Lenders' Direct Agreement, HMQ shall, upon request made by the Lenders' Agent, Appointed Representative or any Suitable Substitute hereunder, perform any and all of its obligations under Section 59.3(e) of the Project Agreement in connection with any termination or replacement of the DE Services Provider effected by the Lenders' Agent, Appointed Representative or Suitable Substitute, as applicable, provided the reference in such Section 59.3(e) to Project Co or its nominee shall be deemed to refer to the Lenders' Agent, Appointed Representative or Suitable Substitute, as applicable, or their respective nominee.

## 24. LANGUAGE OF AGREEMENT

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

## 25. COUNTERPARTS

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

## 26. CONFIDENTIALITY

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

## 27. COPYRIGHT NOTICE

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Lenders' Direct Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

For Information Purposes Only

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

**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO**, as represented by the Minister  
of Transportation

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

**Name:** [REDACTED]

**Title:** [REDACTED]

For Information Purposes Only

*Signature Page to Lenders' Direct Agreement*

**BANK OF MONTREAL**, as agent

by

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

Title:

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

Title:

*Signature Page to Lenders' Direct Agreement*

[REDACTED]

by

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

Title:

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

Title:

I/We have authority to bind the partnership

*Signature Page to Lenders' Direct Agreement*

**SCHEDULE 5**

**DE SERVICE PROVIDER'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 27<sup>th</sup> day of June, 2013

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the  
Minister of Transportation

(“**HMQ**”)

- AND -

[REDACTED]

(“**Project Co**”)

- AND -

[REDACTED]

(the “**DE Services Provider**”)

- AND -

[REDACTED]

(the “**DE Services Guarantor**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the DE Services Provider and the DE Services Guarantor to enter into, this DE Service Provider's Direct Agreement with HMQ.
- B. Project Co and the DE Services Provider have entered into the DE Services Contract, which requires the DE Services Provider and the DE Services Guarantor to enter into this DE Service Provider's Direct Agreement with HMQ.

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

## 1. DEFINITIONS

In this DE Service Provider's Direct Agreement, unless the context otherwise requires:

- (a) **"Business Day"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (b) **"DE Services Contract"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (c) **"DE Services Provider"** [REDACTED]
- (d) **"DE Services Guarantor"** means [REDACTED]
- (e) **"Default Notice"** has the meaning given in Section 5(a).
- (f) **"Governmental Authority"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (g) **"Lenders"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (h) **"Lenders' Direct Agreement"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (i) **"Party"** means HMQ, the DE Services Provider, **the DE Services Guarantor** or Project Co, and **"Parties"** means HMQ, the DE Services Provider, **the DE Services Guarantor** and Project Co.
- (j) **"Project"** has the meaning given in Schedule 1 – Definitions and Interpretations.
- (k) **"Project Agreement"** means the project agreement made on or about June 27, 2013 between HMQ and Project Co.
- (l) **"Project Co"** means [REDACTED].
- (m) **"Step-In Notice"** has the meaning given in Section 6(a).
- (n) **"Substitute"** has the meaning given in Section 6(a).

## 2. INTERPRETATION

This DE Service Provider's Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this DE Service Provider's Direct Agreement are for convenience of reference only, shall not constitute a part of this DE Service Provider's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this DE Service Provider's Direct Agreement.

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



- (j) Where this DE Service Provider's Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this DE Service Provider's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

### **3. CONFLICT IN DOCUMENTS**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this DE Service Provider's Direct Agreement, the Project Agreement and this DE Service Provider's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this DE Service Provider's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

### **4. AGREEMENTS**

- (a) Project Co and the DE Services Provider shall not amend, modify, or depart from the terms of the DE Services Contract without the prior written consent of HMQ, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this DE Service Provider's Direct Agreement and does not have the effect of increasing any liability of HMQ, whether actual or potential. Project Co and the DE Services Provider shall provide to HMQ a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the DE Services Contract.
- (c) If the DE Services Provider gives Project Co any notice of any default(s) under the DE Services Contract that may give the DE Services Provider a right to terminate the DE Services Contract or to treat it as having been repudiated by Project Co or to discontinue the DE Services Provider's performance thereunder, then the DE Services Provider shall concurrently provide HMQ with a copy of such notice and set out in reasonable detail the default(s).

### **5. NO TERMINATION BY DE SERVICES PROVIDER WITHOUT DEFAULT NOTICE**

The DE Services Provider shall not exercise any right it may have to terminate the DE Services Contract or to treat it as having been repudiated by Project Co or to discontinue the DE Services Provider's performance thereunder unless:

- (a) the DE Services Provider first delivers a written notice (a “**Default Notice**”) to HMQ setting out in reasonable detail the default(s) on which the DE Services Provider intends to rely in terminating the DE Services Contract or to treat it as having been repudiated by Project Co or to discontinue the DE Services Provider’s performance thereunder; and
- (b) within a period of 5 Business Days of HMQ receiving the Default Notice:
  - (i) the default(s) on which the DE Services Provider intends to rely in terminating the DE Services Contract or to treat it as having been repudiated by Project Co or to discontinue the DE Services Provider’s performance thereunder have not been remedied; and
  - (ii) the DE Services Provider has not received a Step-In Notice from HMQ,

provided that if, within such period of 5 Business Days, HMQ agrees to pay the DE Services Provider’s reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

## 6. STEP-IN RIGHTS

- (a) HMQ may at any time:
  - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of HMQ receiving a Default Notice; or
  - (ii) if HMQ has not received a Default Notice and if HMQ’s right to terminate the Project Agreement has arisen and is continuing,deliver a notice (a “**Step-In Notice**”) electing to replace Project Co under the DE Services Contract either with HMQ or a third party designated by HMQ in the Step-In Notice (the “**Substitute**”), provided that HMQ can demonstrate to the DE Services Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the DE Services Contract.
- (b) Subject to Section 6(d), upon receipt by the DE Services Provider of a Step-In Notice:
  - (i) Project Co and the DE Services Provider will be deemed to be released from their existing and future obligations under the DE Services Contract to each other (except with respect to any and all indemnities from Project Co or the DE Services Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the DE Services Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the DE Services Provider under the DE Services Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the DE Services Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the DE Services

Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the DE Services Provider to HMQ if HMQ pays for the DE Services Provider's reasonable costs of continued performance pursuant to Section 5;

- (iii) any guarantee, bond or covenant in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the DE Services Provider to be performed, observed or carried out by the DE Services Provider as contained in, referred to, or inferred from the DE Services Contract shall be assigned, novated or granted, as required by HMQ or the Substitute, as applicable, each acting reasonably, to HMQ or the Substitute, as applicable, and the DE Services Provider shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the DE Services Provider, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
- (iv) at HMQ's request, the DE Services Provider shall enter into, and shall cause the DE Services Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and HMQ shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between HMQ or the Substitute, as applicable, and the DE Services Provider, acceptable to HMQ and the DE Services Provider, each acting reasonably, on substantially the same terms as the DE Services Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ and the Substitute in order to achieve a smooth transfer of the DE Services Contract to HMQ or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the DE Services Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the DE Services Provider receives a Step-In Notice, the DE Services Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the DE Services Contract that it is or has validly exercised those step-in rights. If the DE Services Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If HMQ gives a Step-In Notice within the time provided hereunder at any time after the DE Services Provider has terminated the DE Services Contract or treated it as having been repudiated by Project Co or discontinued the DE Services Provider's performance

thereunder in accordance with the terms of this DE Service Provider's Direct Agreement, the DE Services Provider agrees that the DE Services Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and HMQ shall pay the DE Services Provider's reasonable costs for re-commencing the obligations it has under the DE Services Contract and the DE Services Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the DE Services Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

## **7. DE SERVICES PROVIDER LIABILITY**

- (a) The liability of the DE Services Provider hereunder shall not be modified, released, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for HMQ, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by HMQ of any other person to review the progress of or otherwise report to HMQ in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to HMQ,

provided always that nothing in this Section 7 shall modify or affect any rights which the DE Services Provider might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event HMQ delivers a Step-In Notice, the DE Services Provider shall have no greater liability to HMQ or any Substitute than it would have had to Project Co under the DE Services Contract, and the DE Services Provider shall be entitled in any proceedings by HMQ or any Substitute to rely on any liability limitations in the DE Services Contract.

## **8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the DE Services Provider shall not be in breach of the DE Services Contract by complying with its obligations hereunder.

## **9. DE SERVICES GUARANTOR AS PARTY**

The DE Services Guarantor agrees with HMQ that the DE Services Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the DE Services Provider of a Step-In Notice and without the requirement of any further action on the part of HMQ, and agrees that the DE Services Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The DE Services Guarantor enters into this DE Service Provider's Direct Agreement solely for the purposes of this Section 9.

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of HMQ, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this DE Service Provider's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) HMQ may assign or otherwise dispose of the benefit of the whole or part of this DE Service Provider's Direct Agreement to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the DE Services Provider of such assignment or disposition.
- (c) The DE Services Provider shall not, without the prior written consent of HMQ and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this DE Service Provider's Direct Agreement except as may be permitted under the DE Services Contract.

**11. NOTICES**

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

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave  
Building B, 3rd Floor  
Downsview, Ontario M3M 1J8

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the DE Services Provider:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the DE Services Guarantor:

[REDACTED]

Fax No.: [REDACTED]

Attention: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this DE Service Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.

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

## **12. AMENDMENTS**

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

## **13. WAIVER**

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

## **14. RELATIONSHIP BETWEEN THE PARTIES**

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

## **15. ENTIRE AGREEMENT**

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

**16. SEVERABILITY**

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

**17. ENUREMENT**

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

**18. GOVERNING LAW AND JURISDICTION**

- (a) This DE Service Provider's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this DE Service Provider's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. HMQ DESIGNATE**

At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this DE Service Provider's Direct Agreement and Project Co, the DE Services Provider and the DE Services Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co, the DE Services Provider and the DE Services Guarantor in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. HMQ shall advise Project Co, the DE Services Provider and the DE Services Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this DE Service Provider's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the DE Services Provider and the DE Services Guarantor acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 19.



**20. FURTHER ASSURANCE**

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

**21. LANGUAGE OF AGREEMENT**

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

**22. COUNTERPARTS**

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

**23. COPYRIGHT NOTICE**

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this DE Service Provider's Direct Agreement.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

**IN WITNESS WHEREOF** the Parties have executed this DE Service Provider's Direct Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**, as represented by the Minister of  
Transportation

Per:

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

Title: [REDACTED]

*Signature Page to DE Service Provider's Direct Agreement*

[REDACTED]

by

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

Title:

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

Title:

I/We have authority to bind the partnership

*Signature Page to DE Service Provider's Direct Agreement*

[REDACTED]

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation.

[REDACTED]

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation.

*Signature Page to DE Service Provider's Direct Agreement*

**SCHEDULE 7****SERVICE DELIVERY POINTS****PART I – SERVICE DELIVERY****1.1 Service Delivery Points**

- (a) Project Co shall perform the Customer-Facing Project Operations only at or from the Service Delivery Points.
- (b) During the Standstill Period, Project Co shall perform the Customer-Facing Project Operations only at or from the Website, the Telephone Service Channel, those DE Premises listed in Parts IIA, IIB and Part III of this Schedule 7, any DE Multi-Use Locations or such other locations or premises as may be approved by HMQ in accordance with the provisions of this Schedule 7; provided, however, that Project Co shall only have the right to perform the Customer-Facing Project Operations at or from the DE Mandatory Replacement Premises during the Standstill Period if it has complied with the provisions of Section 1.4(b)(ii) of this Schedule 7. For certainty, except as otherwise expressly permitted in this Schedule 7, during the Standstill Period, Project Co shall not move any of the Customer-Facing Project Operations from the DE Premises listed in Parts IIA and IIB of this Schedule 7 into any DE Replacement Premises.
- (c) Without limiting the generality of Section 1.1(a) above, but subject to Section 1.1(b) above, to the extent that Project Co is moving from any DE Premises or DE Mandatory Replacement Premises, Project Co, as part of any such relocation of the DE Premises, shall:
  - (i) at all times comply with the provisions of Section 1.3 of this Schedule 7; and
  - (ii) in respect of the DE Premises or DE Mandatory Replacement Premises from which it is relocating, ensure that any DE Replacement Premises is located within a 10 km radius of the DE Premises or DE Mandatory Replacement Premises from which it is then relocating.
- (d) Notwithstanding the provisions of Sections 1.1(a), (b) and (c), during the Standstill Period Project Co shall have the right to perform Project Operations from locations in addition to those listed in Parts IIA and IIB of this Schedule 7 – Service Delivery Points, any DE Mandatory Replacement Premises and any DE Multi-Use Location, as applicable, provided that prior to locating in any such additional location, Project Co first complies with the provisions of Section 1.3 of this Schedule 7.

**1.2 DE Temporary Premises**

- (a) For the purposes of this Schedule 7, the term “**DE Temporary Premises**” means a DE Premises that, as of the Commencement Date, is subject to a month-to-month tenancy arrangement with the current landlord of such DE Premises.

- (b) In respect of the DE Temporary Premises, Project Co shall use its best efforts to enter into a binding lease or other binding agreement permitting occupancy for each of the DE Temporary Premises (in form and substance acceptable to HMQ) not later than the first anniversary of the Commencement Date, which leases or other agreement permitting occupancy will be effective as of a date that is not later than the first anniversary of the Commencement Date.
- (c) Notwithstanding the obligations in Section 1.1 of this Schedule 7, in the event that Project Co is not able to comply with its obligation in Section 1.2(b) by the first anniversary of the Commencement Date, Project Co shall relocate from the applicable DE Temporary Premises to a DE Replacement Premises, in accordance with the requirements set out in Section 1.3 of this Schedule 7, by no later than the first anniversary of the Commencement Date.
- (d) If at any time prior to the first anniversary of the Commencement Date, Project Co's tenancy at a DE Temporary Premises is terminated by the landlord of such DE Temporary Premises (or person having similar rights in respect of such DE Temporary Premises) (such location hereinafter referred to as the "**Terminated Premises**"), Project Co shall relocate to a DE Replacement Premises by complying with the obligations in Section 1.3 of this Schedule 7; provided, however, that all steps required to be completed by Project Co as set out in Section 1.3 of this Schedule 7 shall be completed prior to the date on which Project Co's tenancy at the Terminated Premises is terminated, and HMQ shall use commercially reasonable efforts to provide all consents or approvals as may be required of it in Section 1.3 of this Schedule 7 within such time period.

### 1.3 DE Replacement Premises and DE Multi-Use Locations

- (a) Any DE Replacement Premises shall be subject to:
  - (i) the submission by Project Co to HMQ of a Business Case Proposal, elements of which are outlined in Appendix A of this Schedule 7 - Service Delivery Points and DE Premises, in respect of the DE Replacement Premises;
  - (ii) the requirement that the DE Replacement Premises be operational on the next Business Day following the closing of the premises that it is replacing, except where an existing DE Premises generally operates on a day other than a Business Day, in which case, the DE Replacement Premises will be operational on the next day if such day is on a day which the DE Premises that is being replaced was generally in operation;
  - (iii) the prior written consent of HMQ, in its sole discretion, approving the proposed DE Replacement Premises and the form of binding lease or occupancy agreement relating thereto; and
  - (iv) HMQ being satisfied that the proposed location would enable Project Co to perform the Project Operations in accordance with the provisions of this Agreement.
- (b) DE Multi-Use Locations shall be subject to:

- (i) the submission by Project Co to HMQ of a Business Case Proposal, elements of which are outlined in Appendix A of this Schedule 7 - Service Delivery Points and DE Premises, in respect of the DE Multi-Use Location;
    - (ii) the requirement that the DE Multi-Use Location be operational on the Business Day proposed in the Business Case Proposal relating to the DE Multi-Use Location;
    - (iii) the prior written consent of HMQ, acting reasonably, approving the proposed DE Multi-Use Location and the form of binding lease or occupancy agreement relating thereto; and
    - (iv) HMQ being satisfied that the proposed location would enable Project Co to perform the Project Operations in accordance with the provisions of this Agreement.
  - (c) HMQ shall, within 1 Business Day of the receipt of the Business Case Proposal prepared by Project Co as required in Section 1.3(a)(i) or Section 1.3(b)(b)(i), as applicable, confirm to Project Co its receipt of the request for the approval of the DE Replacement Premises or DE Multi-Use Location that is the subject of such Business Case Proposal (the “**HMQ Receipt Notice**”). HMQ shall, within 5 Business Days from the date of delivery of the HMQ Receipt Notice, notify Project Co of the anticipated actions and steps required to be taken by HMQ in order to provide a decision regarding the DE Replacement Premises or DE Multi-Use Location that is the subject of the Business Case Proposal delivered by Project Co.
  - (d) Project Co shall, on Commercial Close, enter into binding leases, which leases will be effective as of the Commencement Date, for the DE Premises located at:
    - (i) 1570 Walkley Road, Ottawa, ON K1V 6P5 (the “**MOI (Ottawa) Lease**”); and
    - (ii) 370 Kenora Ave. North, Stoney Creek, ON L8E 2W2 (the “**MOI (Stoney Creek) Lease**”)
- each such lease to be substantially in the form set forth at Appendix B of this Schedule 7.
- (e) Project Co shall, on Commercial Close, enter into the Lease Payment Obligations Agreement (Ottawa) for the premises that is the subject of the MOI (Ottawa) Lease and Lease Payment Obligations Agreement (Stoney Creek) for the premises that is the subject of the MOI (Stoney Creek) Lease, which agreements will be effective as of the Commencement Date.
  - (f) Each DE Replacement Premises must be capable of being maintained, and must at all times be maintained, in accordance with Good Industry Practice.
  - (g) No DE Replacement Premises may be located, at the time of commencement of occupancy by Project Co of such premises, within 15 metres of premises where:
    - (i) liquor (as that term is defined in the *Liquor License Act* (Ontario)) is sold other than a restaurant or premises located within a larger retail store;

- (ii) sexually explicit products or services are sold, other than a convenience store or in the case of a DE Multi-Use Location;
- (iii) tobacco or tobacco-related products are sold, other than a convenience store or in the case of a DE Multi-Use Location; or
- (iv) products or services are offered for sale that HMQ considers to be incompatible with the promotion of safe driving as determined by HMQ, in its sole discretion.

#### **1.4 DE Mandatory Replacement Premises**

- (a) For the purposes of this Schedule 7, the term “**DE Mandatory Replacement Premises**” means those DE Premises listed in Part III of this Schedule 7.
- (b) In respect of the DE Mandatory Replacement Premises, Project Co shall:
  - (i) relocate the Project Operations that are currently operated at any DE Mandatory Replacement Premises to a DE Replacement Premises by no later than the Commencement Date; or
  - (ii) by the date that is no later than 75 days prior to the Commencement Date, enter into a binding lease or other binding agreement permitting occupancy (in form and substance acceptable to HMQ) at such DE Mandatory Replacement Premises.
- (c) In respect of a DE Mandatory Replacement Premises that is being relocated by Project Co pursuant to Section 1.4(b)(i) of this Schedule 7, Project Co shall:
  - (i) at all times comply with the provisions of Section 1.3 of this Schedule 7; and
  - (ii) by the date that is no later than 75 days prior to the Commencement Date, enter into a binding lease or other binding agreement permitting occupancy (in form and substance acceptable to HMQ) in respect of the DE Replacement Premises that is replacing the DE Mandatory Replacement Premises, which lease or agreement permitting occupancy will be effective as of the Commencement Date for the DE Replacement Premises.

#### **1.5 New Third Party Leases**

- (a) Project Co shall not enter into any New Third Party Lease without the prior written consent of HMQ, in its sole discretion. Every New Third Party Lease must contain a provision that such New Third Party Lease shall be assignable to HMQ or from time to time to a third party identified by HMQ without the necessity of obtaining any person's consent, a non-disturbance provision in favour of the assignee and a provision that any notice of a default by Project Co under such New Third Party Lease that is given by the landlord or sublandlord thereunder to Project Co will not be effective until a copy of the original thereof is delivered to HMQ. At HMQ's request, Project Co shall assign and/or renew each such New Third Party Lease to HMQ or to a person identified by



HMQ, effective upon or prior to the occurrence of the Termination Date or the Expiry Date, as applicable.

### 1.6 Project Co Owned Premises

- (a) During the Project Term, Project Co shall not use any proposed Project Co Owned Premises to perform the Customer-Facing Project Operations without the prior written consent of HMQ, in its sole discretion, which consent may be conditioned on Project Co complying with such other terms as may be imposed by HMQ in connection with the granting of such consent. In addition, prior to using any Project Co Owned Premises for such purpose, Project Co shall grant HMQ an option, in form and substance acceptable to HMQ (including a form of lease attached), to lease such Project Co Owned Premises for the operation of the Customer-Facing Project Operations for a term of (a) 2 years from the termination Date or (b) up to the Expiry Date, whichever is greater, at a fair market rent as agreed between HMQ and Project Co or, failing agreement, as determined by dispute resolution in accordance with Section 58 of the Project Agreement. Such option shall be exercisable effective upon the occurrence of the Termination Date, and shall be assignable by HMQ to a person identified by HMQ without the necessity of obtaining any person's consent.

### 1.7 Licence

- (a) Project Co hereby grants to HMQ, without charge, a licence allowing HMQ to use a minimum of 1½ by 1½ metres in an area of each DE Full Time Sites, the location of such area to be agreed upon between HMQ and Project Co (the “**Reserved Area**”). The Reserved Area shall have reasonable customer access as determined by HMQ.
- (b) Project Co shall prominently and visibly display in the Reserved Area and in Travel Points such pamphlets, posters and brochures and other written materials as required by HMQ from time to time.

### 1.8 Closure of Any DE Multi-Use Location

- (a) Notwithstanding anything else in this Schedule 7 or elsewhere in the Project Agreement, Project Co may make a request in writing to HMQ proposing the closure of, or cessation of performance of any of the Project Operations from or at, any DE Multi-Use Location (the “**DE Multi-Use Closure**”). Any DE Multi-Use Closure shall be subject to:
- (i) the delivery by Project Co to HMQ of a written submission in sufficient detail, reasonably satisfactory to HMQ, which will include, without limitation:
- (A) the reasons for the proposed DE Multi-Use Closure;
- (B) a historical record of the transactions completed at the DE Multi-Use Location that is the subject of the proposed DE Multi-Use Closure, which records will be broken down by Contract Year; and
- (C) a listing of all Project Operations performed at the DE Multi-Use Location that is the subject of the proposed DE Multi-Use Closure;

- (ii) the provision by an officer of Project Co or the applicable Project Co Party of a certificate addressed to HMQ, and in a form and substance acceptable to HMQ, confirming, *inter alia*, that such closure or cessation is occurring as a result of a general business decision by Project Co or the applicable Project Co Party which owns or operates such DE Multi-Use Location to cease carrying on business generally at the affected premises;
  - (iii) the prior written consent of HMQ, in its sole discretion, approving the proposed DE Multi-Use Closure; and
  - (iv) HMQ being satisfied that Project Co's ability to perform the Project Operations will not be negatively affected by such DE Multi-Use Closure.
- (b) In connection with any proposed DE Multi-Use Closure, HMQ shall, within 1 Business Day of the receipt of the written submission referenced in Section 1.8(a)(i), confirm to Project Co its receipt of the request for the approval of the DE Multi-Use Closure (the "**HMQ DE Multi-Use Closure Receipt Notice**"). HMQ shall, within 5 Business Days from the date of delivery of the HMQ DE Multi-Use Closure Receipt Notice, notify Project Co of the anticipated actions and steps required to be taken by HMQ in order to provide a decision regarding the DE Multi-Use Closure that is the subject of such written submission delivered by Project Co.

## 1.9 DE Oakville Premises

- (a) In respect of the DE Oakville Premises:
- (i) Project Co shall relocate the Project Operations that are currently performed at the DE Oakville Premises to another location within a 10 KM radius of the DE Oakville Premises by September 1<sup>st</sup>, 2014; and
  - (ii) by September 1<sup>st</sup>, 2014, Project Co will have the Project Operations at the DE Replacement Site fully functional and operational.
- (b) In respect of the DE Oakville Premises being relocated by Project Co pursuant to Section 1.9(a)(i) of this Schedule 7, Project Co shall:
- (i) at all times comply with the provisions of Section 1.3, 1.5 and 1.7 of this Schedule 7, as applicable; and
  - (ii) by the date that is no later than September 1<sup>st</sup>, 2014, enter into a binding lease or other binding agreement permitting occupancy (in form and substance acceptable to HMQ) in respect of the DE Replacement Premises that is replacing the DE Oakville Premises.
- (c) Notwithstanding the provisions of Schedule 22 – Variation Procedure, the relocation of the DE Oakville Premises will be at the sole cost and expense of Project Co.
- (d) Notwithstanding the provisions of Schedule 7 – Service Delivery Points, the DE Oakville Premises will not be subject to the restrictions on relocation of a DE Premise during the

Standstill Period as set-out in Schedule 7, Section 1.1(b), subject to the provisions of this Section 1.9.

For Information Purposes Only

**PART II(A) – DE FULLTIME SITES**

<b>Number</b>	<b>Region</b>	<b>HMQ Internal Reference</b>	<b>Municipal Address</b>
1.	Central	Aurora	1 Henderson Drive Unit 4 Aurora, ON L4G 4J7
2.		Brampton	59 First Gulf Blvd. Unit 9 Brampton, ON L6W 4P9
3.		Burlington	The Burlington Power Centre 1250 Brant St. Unit 2 Burlington, ON L7P 1X8
4.		Downsview (Toronto)	Downsview Park 37 Carl Hall Road Downsview, ON M3K 2E2
5.		Etobicoke (Toronto)	Centennial Park Plaza 5555 Eglinton Ave. W. Toronto, ON M9C 5M1
6.		Metro East (Toronto)	Victoria Terrace Plaza 1448 Lawrence Ave. E. Unit 15 North York, ON M4A 2V6
7.		Oakville	2035 Cornwall Rd. Oakville, ON L6J 7S2
8.		Oshawa	Midtown Mall 200 John St. W. Oshawa, ON L1J 2B4
9.		Scarborough (Toronto)	The Village of Abbey Lane Shopping Centre 91 Rylander Blvd. Scarborough, Ontario M1B 5M5

Number	Region	HMQ Internal Reference	Municipal Address
10.		St. Catharines	Bunting Square 285 Bunting Rd. Unit 1 St. Catharines, ON L2M 7T9
11.		Woodbridge	5780 Hwy. 7 Woodbridge, ON L4L 1T8
12.	Southwestern	Barrie	520 Bryne Dr. Unit 7 Barrie, ON L4N 9P6
13.		Brantford	320 North Park St. Unit 1B Brantford, ON N3R 4L3
14.		Chatham	171 Keil Dr. S. Unit 4-5 Chatham, ON N7M 3H3
15.		Clinton	154 Beech St. Clinton, ON N0M 1L0
16.		Guelph	255 Woodlawn Rd. W. Unit 106 Guelph, ON N1H 8J1
17.		Hamilton	370 Kenora Ave N. Stoney Creek, ON L8E 2W2
18.		Kitchener	1405 Ottawa St. N. Unit 11 Kitchener, ON N2A 3Z1
19.		London	220 Exeter Rd. Unit 1 London, ON N6L 1A3
20.		Orangeville	50 Fourth Ave. Orangeville, ON L9W 4P1

Number	Region	HMQ Internal Reference	Municipal Address
21.		Orillia	404 Lachie St. Unit 3 Orillia, ON L3V 4P5
22.		Owen Sound	Spring Mount Business Park 107 Jason St., R.R.#5 Unit 1 Owen Sound, ON N4K 5N7
23.		Sarnia	1362 Lambton Mall Rd. Suite 5 Sarnia, ON N7S 5A1
24.		Simcoe	140 Queensway E. Simcoe, ON N3Y 4Y7
25.		Stratford	59 Lorne Ave. E. Unit 3 Stratford, ON N5A 6S4
26.		Tillsonburg	Tillson Avenue Mall 107 Concession St. E. Tillsonburg, ON N4G 4W4
27.		Walkerton	Saugeen Business Park 200 McNab St. Walkerton, ON N0G 2V0
28.		Windsor	2470 Dougall Ave. Windsor, ON N8X 1T2
29.		Woodstock	476 Peel St. Woodstock, ON N4S 1K1
30.	Eastern	Bancroft	141 Hastings St. N. Unit 2 Bancroft, ON K0L 1C0
31.		Belleville	345 College St. E. Unit 12, R.R.#6 Belleville, ON K8N 4Z6

Number	Region	HMQ Internal Reference	Municipal Address
32.		Brockville	2211 Parkedale Ave. Brockville, ON K6V 6B2
33.		Cornwall	120 Tollgate Rd. W. Cornwall, ON K6J 5M3
34.		Hawkesbury	Hawkesbury Mall 400 Spence Ave. Unit 19 Hawkesbury, ON K6A 2Y3
35.		Kingston	381 Select Dr. Units 1-5 Kingston, ON K7M 8R1
36.		Lindsay	Lindsay Square Mall 401 Kent St. W. Unit 20 Lindsay, ON K9V 4Z1
37.		Ottawa	5303 Canotek Rd. Unit 14 Ottawa, ON K1J 9M1
38.		Ottawa	1570 Walkley Road Ottawa, ON K1V 6P5
39.		Pembroke	513 Eganville Ave. Pembroke, ON K8A 4E6
40.		Peterborough	749 Erskine Ave. Peterborough, ON K9J 7Y6
41.		Renfrew	115 Plaunt St. S. Renfrew, ON K7V 1M5
42.		Winchester	12028 Dawley Dr. Unit 1 Winchester, ON K0C 2K0

Number	Region	HMQ Internal Reference	Municipal Address
43.	Northern	Espanola	Espanola Mall 800 Centre St. Unit 101 Espanola, ON P5E 1J3
44.		Huntsville	215 Main St. W. 1 <sup>st</sup> Floor Huntsville, ON P1H 1Y1
45.		Kapuskasing	Model City Mall 25 Brunetville Rd. Unit 64 Kapuskasing, ON P5N 2E9
46.		Kirkland Lake	Kirkland Lake Shopping Centre 150 Government Rd. W. Kirkland Lake, ON P2N 2E9
47.		New Liskeard	Timiskaming Square R.R.#2, Site 2-151, Unit 4A New Liskeard, ON P0J 1P0
48.		North Bay	New North Bay Mall 300 Lakeshore Dr. Unit 502 North Bay, ON P1A 3V2
49.		Sudbury	Montrose Mall 782 LaSalle Blvd. Sudbury, ON P3A 4V4
50.		Timmins	The Porcupine Mall 4900 Hwy. 101 E. Timmins, ON P0N 1K0
51.	Northwestern	Dryden	Golden Mile Plaza 539 Government St. Unit 8 Dryden, ON P8N 2P6
52.		Fort Frances	533 Mowat Ave. Fort Frances, ON P9A 1Z1



Number	Region	HMQ Internal Reference	Municipal Address
53.		Kenora	Kenora Shoppers Mall 534 Park St. Unit 1270 Kenora, ON P9N 1A1
54.		Sault Ste. Marie	Churchill Plaza 150 Churchill Blvd. C15-16 Sault Ste. Marie, ON P6A 3Z9
55.		Thunder Bay	1186 Memorial Ave. Unit 2 McIntyre Centre Thunder Bay, ON P7B 5K5
56.		Smith Falls	County Fair Mall, 283 Brockville St. Smith Falls, ON K7A 4Z6

**PART II(B) – TRAVEL POINTS**

Number	Region	HMQ Internal Reference	Municipal Address
1.	Southwestern	Collingwood	191 Hurontario St. Unit 6 Collingwood, ON L8Y 2M1
2.		Leamington	District Half Century Centre 160 Talbot St. E. East Leamington, ON N8H 1M2
3.	Eastern	Arnprior	100 Madawaska Blvd Arnprior, ON K7S 1S7
4.		Barry's Bay	The Township of Madawaska Valley 85 Bay St. P.O. Box 1000 Barry's Bay, ON K0J 1B0
5.		Carleton Place	Carleton Place Community Centre (Large Boardroom) 75 Neelin St. Carleton Place, ON K7C 2I6
6.		Casselman	D & V License Issuing Office #473 651 Principale St. Box 470 Casselman, ON K0A 1M0
7.		Haliburton	14072 Mountain St. (OPP Building at Corner of Mountain St. and Hwy. 118) Haliburton, ON K0M 1S0
8.		Kemptville	St. John's United Church 400 Prescott St. Kemptville, ON K0G 1J0
9.		Madoc	O'Neil Parish Hall 12 Prince Albert St. Madoc, ON K0K 2K0

Number	Region	HMQ Internal Reference	Municipal Address
10.		Port Hope	Port Hope Town Hall (Committee Room) 56 Queen St. Port Hope, ON L1A 3Z9
11.		Rockland	Knights of Columbus Hall (Chevaliers de Colomb) 954 Giroux St. Rockland, ON K4K 1L5
12.		Westport	Westport Fire Hall Spring St. Westport, ON K0G 1X0
13.	Northern	Blind River	Blind River Marina 1 Marina Dr. Blind River, ON P0P 1B0
14.		Chapleau	Aux Trois Moulins Motel 154 Martel Rd. Chapleau, ON P0M 1K0
15.		Cochrane	Cochrane Board of Trade 4 Third Avenue Cochrane, ON P0L 1C0
16.		Dubreuilville	D & V License Issuing Office 23 Pins St. Dubreuilville, ON P0S 1B0
17.		Elliot Lake	Lester B. Pearson Civic Centre Hwy. 108 Elliot Lake, ON P5A 2T1
18.		Hearst	Gilles Gagnon Welcome Centre 523 Hwy 11 E. Hearst, ON P0L 1N0
19.		Hornepayne	Royal Canadian Legion 48 Sixth Ave. PO Box 339 Hornepayne, ON P0M 1Z0

Number	Region	HMQ Internal Reference	Municipal Address
20.		Little Current	Howland Recreational Arena 9001 Hwy. 6 S. Little Current, ON P0P 1K0
21.		Mantouwadge	Recreational Centre Manitou Rd. Manitouwadge, ON P0T 2C0
22.		Moosonee	Moosonee Curling Club 1 Arena Road Moosonee, ON POL 1Y0
23.		Mattawa	160 Water St. P.O. Box 390 Mattawa, ON P0H 1V0
24.		Parry Sound	The Kinsmen Club 110 Parry Sound Drive Parry Sound, Ontario P2A 2W7
25.		Sundridge	Sundridge Community Centre 110 Main St. Sundridge, ON Sundridge P0A 1Z0
26.		White River	Municipal Building 102 Durham St. White River, ON PO Box 307 P0M 2G0
27.	Northwestern	Atikokan	White Otter Inn (conference room) 710 MacKenzie Ave. E. Atikokan, ON P0T 1C0
28.		Ear Falls	Ear Falls Municipal Office 1 Shelski Lane Ear Falls, ON P0V 1T0
29.		Geraldton	Municipality of Greenstone 200 Wardrobe Ave. Box 70 Geraldton, ON P0T 1M0

Number	Region	HMQ Internal Reference	Municipal Address
30.		Ignace	Crossroads Employment Centre 312 Pine St. Ignace, ON Box 1227 P0T 1T0
31.		Marathon	Zero 100 Motor Inn 37 Peninsula Rd. Box 700 Marathon, ON P0T 2E0
32.		Nipigon	Nipigon Arena Township of Nipigon 138 Wadsworth Dr. Nipigon, ON P0T 2J0
33.		Pickle Lake	Pickle Lake Community Centre Pickle Lake, ON P0V 3A0
34.		Rainy River	Bluewave Energy Ltd. Marmus Service Center/Shell Station 610 Atwood Ave. Hwy. 11 Rainy River, ON P0W 1L0
35.		Red Lake	Royal Canadian Legion Hall Red Lake Branch 102 P.O. Box 212 Hwy. 105 Red Lake, ON P0V 2M0
36.		Sioux Lookout	Sioux Lookout Public Library 21 Fifth Ave. P.O. Box 1028 Sioux Lookout, ON P8T 1B3
37.		Schreiber	Municipal Complex 204 Alberta St. Schreiber, ON P0T 2S0
38.		Thessalon	Dave Seabrook Motors 214 Main St. Thessalon, ON P0R 1L0

<b>Number</b>	<b>Region</b>	<b>HMQ Internal Reference</b>	<b>Municipal Address</b>
39.		Wawa	Michipicoten Memorial Community Centre 85-90 Chris Simon Dr. P.O. Box 500 Wawa, ON P0S 1K0

For Information Purposes Only

**PART III – DE MANDATORY REPLACEMENT PREMISES**

[Intentionally Deleted]

For Information Purposes Only

**APPENDIX A****ELEMENTS OF BUSINESS CASE PROPOSAL**

- Address and physical description of proposed location as well as map showing proximity of proposed location to existing location being replaced
- Proposed Date of Occupancy
- Analysis of customer demand patterns for the performance of the DE Services in the communities served by the existing location and the proposed location, including analysis of the community population and community demographic profile
- Explanation of how locating the Service Delivery Point at the proposed location will maintain or improve customer service as appropriate in the communities services by the existing location and the proposed location
- Summary of customer feedback regarding the existing location, including feedback based on customer surveys
- Floor plan showing
  - Total square metres of space
  - Number and locations of workstations, printers, shredders, terminals, etc.
  - Secure knowledge test room and seating
  - Client waiting area
  - Practical test marshalling area
  - Client triage station
  - Staff areas
  - Washrooms
  - Electrical and telephony outlets
  - Secure storage areas
  - Secure banking room
  - Number and location of video surveillance / security cameras to be used
- Rationale for number of workstations at proposed locations



- Annual transaction volumes by type
- Projected through-put per terminal
- Proposed staffing levels by category
- Proximity to Public Transit
  - Map(s) showing access
- Proximity to Test Routes
  - Notes and evidence attesting to the ability of the proposed test routes to meet all the requirements of the types of practical (road) tests proposed for the location
  - Maps of all proposed test routes
- Number and Location of Parking Spots Allocated
  - Both staff and client allocations
- Elevations of Proposed Location
  - Photographs and/or drawings
- Proposed Signage
  - Indicate how signage meets visual identity standards
- Colour drawings showing mock-up of interior of new location (if available)
- Conformance to Ontario Building Code
  - Including AODA requirements
- Description of tenants (if any) adjacent to or within 30 meters of proposed location
- Copy of Lease

**APPENDIX B**

**FORM OF LEASE TO BE ENTERED INTO WITH HMQ,  
AS REPRESENTED BY THE MINISTER OF INFRASTRUCTURE**

Please see attached.

For Information Purposes Only

**APPENDIX C**

**PART I**

**FORM OF LEASE PAYMENT OBLIGATIONS AGREEMENT (OTTAWA)**

Please see attached.

**PART II**

**FORM OF LEASE PAYMENT OBLIGATIONS AGREEMENT (STONEY CREEK)**

Please see attached.

For Information Purposes Only

**SCHEDULE 9**  
**KEY INDIVIDUALS**

<b>Project Co Party</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

**SCHEDULE 10**

**LEASE AND LICENSING AGREEMENT**

**THIS PERSONAL PROPERTY AGREEMENT** is made as of June 27, 2013

**BETWEEN:**

**HER MAJESTY THE QUEEN** in right of Ontario

as represented by the Minister of Transportation

(“**HMQ**”)

-and-

[REDACTED]

(“**Project Co**”)

**BACKGROUND:**

1. HMQ and Project Co have entered into a Driver Examination Services Project Agreement made as of the 27<sup>th</sup> day of June, 2013 (the “**Project Agreement**”), which requires Project Co to perform the Project Operations.
2. In order to facilitate Project Co’s performance of the Project Operations the Project Agreement provides that HMQ will lease or sublease certain equipment, and license or sublicense certain software, to Project Co.
3. This lease and licensing agreement is entered into between HMQ and Project Co for the purpose of establishing the general terms and conditions applicable to this lease or sublease of equipment and the licence or sublicense of software between HMQ and Project Co.

For consideration, the receipt and sufficiency of which are acknowledged by each of them, the parties covenant and agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

1.1 **Definitions.** Unless otherwise provided or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

**“Agreement”** means this agreement entitled “Lease and Licensing Agreement”, including, for the avoidance of doubt, all schedules referred to herein.

**“Alterations”** means any alterations, additions, modifications, changes or accessions.

**“Encumbrance”** means any mortgage, charge, easement, encroachment, lien, adverse claim, restrictive covenant, assignment by way of security, security interest of any nature, servitude, pledge, hypothecation, security agreement, title retention agreement, right of occupation, option or privilege or any agreement to create any of the foregoing.

**“Equipment”** means the personal property referred to in Schedule “A” (including the Hardware) and any substitution or replacement for that property required or permitted by the Project Agreement.

**“Hardware”** means the personal computers (including associated components and communications and connecting equipment peripherals) described in Schedule “A”.

**“HMQ Databases”** means the Databases described in Schedule “C”.

**“HMQ Networks”** means the Networks described in Schedule “C”.

**“HMQ Software”** means (a) the software listed on Schedule “B” under the heading “HMQ Software”, and applicable documentation, and (b) the operating software for the HMQ Systems.

**“Licence Purposes”** has the meaning given in Section 2.2(a).

**“Software”** means the HMQ Software and the Third Party Software.

**“Term”** has the meaning given in Section 2.4.

**“Third Party”** means, as to any Personal Property, the third party manufacturer, distributor seller, or licensor of such Personal Property, or where the context requires, any or all of them.

**“Third Party Agreement”** means each third party agreement between the Government of Ontario and a Third Party.

**“Third Party Software”** means the software licensed to HMQ under Third Party Agreements, as referred to on Schedule “B” under the heading “Third Party Software”, and all modifications thereto and applicable documentation for which licence is provided to HMQ under the applicable Third Party Agreement.

1.2 **Other Definitions.** Capitalized words contained in this Agreement and not otherwise defined in this Agreement shall have the same meanings as set out in the Project Agreement.

1.3 **Interpretation.** Sections 2.1, 2.2, 2.6 to 2.30 inclusive in Schedule 1 - Definitions and Interpretation of the Project Agreement shall apply to and govern the interpretation of this Agreement.

ARTICLE 2  
LEASING AND LICENSING

2.1 **Lease of Equipment.** HMQ leases to Project Co, and Project Co leases from HMQ, all of the Equipment, upon and subject to the terms and conditions of this Agreement for the Term. Project Co shall, in the case of the Equipment, perform all of HMQ's obligations contained in each applicable Third Party Agreement. Unless otherwise provided in this Agreement, Project Co shall not have the right to exercise any of HMQ's rights contained in any Third Party Agreement.

2.2 **License to use Software.**

- (a) Grant of Licence. Subject to Section 2.2(b), HMQ hereby grants to Project Co, and Project Co accepts from HMQ, a personal, non-transferable, non-sublicensable and non-exclusive licence to use the Software, solely in executable object code format, at the Service Delivery Points, as required for Project Co to deliver the DE Services pursuant to the Project Agreement (the "**Licence Purposes**"). Project Co acknowledges that the License Purposes will be revoked and the grant of license provided herein of no further force or effect in the event this Agreement is terminated in accordance with the provisions of Section 2.5 of the Agreement.
- (b) Right to Sublicense. Notwithstanding the restrictions on transferability and sublicensing set forth in Section 2.2(a) above, Project Co shall have the right to transfer and sublicense the license granted herein to (a) the DE Services Provider without the prior written consent of HMQ and (b) another Project Co Party upon the prior written consent of HMQ, in each case pursuant to the terms of a sublicense agreement between Project Co and the DE Services Provider or such Project Co Party (as applicable) containing substantially the same terms and conditions of this Agreement and in a form acceptable to HMQ, acting reasonably.
- (c) Restrictions on Use. Project Co shall (i) not make any copies of the Software, (ii) not transfer, lease, export or grant a sublicense of the Software or the licence to use the Software contained in this Agreement to any Person except if authorized to do so by HMQ in writing, (iii) not use the Software except for the Licence Purposes, (iv) prevent all third parties from using the Software, other than applicants for Driver's Licences who directly use the applicable and then current version of the driver knowledge testing software to complete the knowledge test portion of the DE Services, (v) take all precautions to prevent third-parties from using the Software in any way that would constitute a breach of this Agreement (and, in the case of the Third Party Software, the applicable Third Party Agreement) including such precautions as Project Co would otherwise take to protect its own proprietary software, hardware and information, (vi) not promote, market or distribute the Software, (vii) not use the Software to act as a service bureau, in whole or in part, for any person (for the avoidance of doubt, delivering the DE Services shall not be considered as acting as a service bureau), (viii) not directly or indirectly disclose the Software to any person other than an authorized representative of Project Co, (viii) not modify, decompile, reverse engineer or otherwise alter the Software, or (ix) in the case of the Third Party Software, comply with the requirements set out in each applicable Third Party Agreement.

- (d) Delivery. HMQ shall deliver to Project Co such copies of HMQ's version of the executable object code for each item of the Software as are agreed by the parties.
- (e) Proprietary Rights. As between HMQ and Project Co, HMQ is the owner of all Intellectual Property Rights in and to the HMQ Software, including all related written materials, documentation and other support materials provided pursuant to the terms of this Agreement, and no title to the Intellectual Property in the HMQ Software is transferred to Project Co by this Agreement.
- (f) Related Services. HMQ shall provide such copies of the Software to Project Co as Project Co reasonably requires for the Licence Purposes, and shall make reasonable efforts (i) in the case of the Third Party Software, to make available to Project Co the applicable services provided to HMQ under the applicable Third Party Agreement, and (ii) in the case of the HMQ Software, to provide support services to Project Co in connection with the HMQ Software.

### 2.3 Licence to Access HMQ IT Systems.

- (a) Grant of Licence. HMQ grants to Project Co, and Project Co accepts from HMQ, a personal, revocable, non-transferable, non-sublicensable and non-exclusive licence to access and use the HMQ IT Systems for the Licence Purposes, through the Hardware at the Service Delivery Points.
- (b) Restrictions on Use. Project Co shall (i) not transfer, lease, export or grant a sublicense of the Software or the licence to use the HMQ Systems contained in this Agreement to any Person except if authorized to do so by HMQ in writing, (ii) not use or access the HMQ IT Systems except for the Licence Purposes, (iii) prevent all third parties from accessing the HMQ IT Systems, including taking such precautions as Project Co would otherwise take to protect its own proprietary software, hardware and information, (iv) not use the HMQ IT Systems to act as a service bureau, in whole or in part, for any Person (for the avoidance of doubt, delivering the DE Services shall not be considered as acting as a service bureau), and (v) not directly or indirectly allow access to the HMQ IT Systems to any Person other than an authorized representative of Project Co.
- (c) Proprietary Rights. No title to the Intellectual Property in the HMQ IT Systems is transferred to Project Co by this Agreement.

2.4 **Term.** The term of this Agreement shall commence on the Commencement Date and shall expire on the Termination Date (the "**Term**").

2.5 **Termination of Project Agreement.** Notwithstanding anything contained in this Article, the leases, subleases, licences and sublicences granted by this Agreement immediately terminate upon the Termination Date.

2.6 **Third Party Payments.** HMQ shall be responsible for any payments to any Third Party for use of the Software by Project Co.



ARTICLE 3  
TAXES

3.1 **Payment of Taxes.** Project Co shall pay to HMQ (or, if HMQ so directs, directly to the applicable taxing Governmental Authority) when due all Taxes payable with respect to this Agreement, Project Co's use of the Personal Property, and all other payments required under this Agreement.

ARTICLE 4  
AUDIT RIGHT; USE; LIMITATIONS4.1 **Audit Right.**

- (a) HMQ shall have the right to audit Project Co, in the manner and form to be determined by HMQ, for the purpose of inspecting the Personal Property and ensuring Project Co's compliance with this Agreement, including having access during normal business hours, or otherwise on not less than 1 Business Day's advance notice, to Project Co, the Service Delivery Points, as applicable, the Personal Property, and all books and records of Project Co relating to the Personal Property.
- (b) Project Co shall, at its cost, correct any deficiencies identified through an audit:
  - (i) in the case of deficiencies that constitute concerns regarding the possible infringement of the Software, within 1 Business Day after the date of receipt of notification of such deficiencies; and
  - (ii) in the case of all other deficiencies, within 5 Business Days after the date of receipt of notification of such deficiencies.
- (c) Project Co shall promptly notify HMQ upon the deficiencies being corrected. After receipt of such notification, HMQ may conduct a follow up audit, as prescribed by HMQ, to confirm that all of the deficiencies have been corrected.
- (d) All costs incurred by Project Co in connection with the audits (and, for avoidance of doubt, all other costs incurred by Project Co in connection with the performance of its obligations under this Section 4.1) shall remain solely the responsibility of Project Co.
- (e) Nothing in this Section 4.1 shall limit or restrict any other rights or remedies HMQ may have under this Agreement or at law or in equity in respect of such deficiencies.
- (f) HMQ's inspection and audit rights in this Agreement shall survive the expiry of the Term or the termination of the leases, subleases, licences and sublicences granted by this Agreement, as applicable, for a period of 5 years.

4.2 **Limitations.** Project Co acknowledges that the Personal Property is leased or licensed under this Agreement on an "as is" basis. Except as expressly set forth in this Agreement or in Section 5.2 of the Project Agreement, there are no warranties, conditions, terms, representations or inducements, oral or written, express or implied, statutory, arising from a course of dealing or usage of trade, or otherwise,

made by or on behalf of HMQ or operating in favour of Project Co as to any aspect of the Personal Property including as to its condition, operation, fitness for any particular purpose, design, capacities, durability or merchantability, or as to this Agreement or any other matter related to this lease transaction. Project Co waives the benefit of all statutory representations and warranties to the same or of similar effect as against HMQ. HMQ and Project Co acknowledge that HMQ is not responsible for any liability, claim, loss, damage or expense of any kind (including strict liability in tort) relating to the Personal Property except for any loss or damage caused by the negligence or willful misconduct of HMQ, its officers, employees, representatives or agents. In no event shall HMQ be liable for any indirect, special, incidental, consequential or punitive damages or losses, including lost profits, even if HMQ has knowledge of the potential damages or losses.

**4.3 Care and Maintenance.** Project Co shall, at its cost, maintain the Personal Property, other than the Hardware and the Software, in good working order, repair, condition and appearance, sufficient to deliver the DE Services and shall, at its cost, promptly repair or replace any damaged item of such Personal Property, other than the Hardware and the Software. HMQ shall maintain and support the Leased HMQ IT Systems as set out in Section 4.1 of Schedule 16 – IT Output Specifications the Project Agreement. Project Co shall protect the Personal Property from deterioration, other than normal wear and tear. Project Co shall comply with all recommendations or requirements of HMQ, the manufacturer or any third party supplier of any of the Personal Property regarding the Personal Property, its maintenance, use or operation. Project Co shall allow the Personal Property to be serviced and repaired only by HMQ.

**4.4 Use.**

- (a) Project Co shall use the Equipment only for the purposes for which it was manufactured and only to deliver the DE Services.
- (b) Project Co shall at its own cost comply with all Applicable Law in any way relating to the possession, use or maintenance of the Personal Property. Project Co shall also use, operate and store the Personal Property and Equipment in accordance with all operating instructions and manuals supplied from time to time by HMQ, the manufacturer or any supplier and in a safe manner using properly trained and qualified personnel exercising due care and skill. Project Co shall maintain and not remove any and all safety guards, devices and warning labels supplied with the Personal Property or later provided by HMQ, or any Third Party. Project Co shall not remove any identification labels affixed to the Personal Property, and shall affix to the Personal Property any labels or identification provided by HMQ.

**4.5 Alterations.** Despite Section 4.4, Project Co shall not without HMQ's prior written consent make any Alterations to the Equipment or to the HMQ Networks. Such consent will not be granted if, in HMQ's sole discretion, such Alterations: (a) would be likely to decrease the value of such Equipment or limit, interfere with or frustrate any aspect of its intended use, (b) would be likely to prejudice or adversely affect any warranties with respect to such Equipment, or (c) are subject to or would subject such Equipment to any Encumbrance. If any of Project Co's Alterations can be removed without damaging such Equipment or interfering with the safe operation or any intended use thereof, Project Co may remove and retain such Alteration. Any damage caused by the removal of any Alteration shall be repaired at Project Co's expense.

4.6 **Replacement Parts.** All replacement parts and components and all Alterations to the Personal Property shall be deemed to be transferred and assigned to HMQ and to become part of the Personal Property and shall be the sole property of HMQ and subject to this Agreement.

## ARTICLE 5 TITLE

5.1 **Title.** Title to the Personal Property shall at all times remain in HMQ. Project Co's only right with respect to the Personal Property is the right to possess and use the Personal Property subject to the terms of this Agreement. Project Co shall defend HMQ's title against any contrary claim asserted at any time by any Person claiming through or against Project Co or arising out of or related in any way to this Agreement or Project Co's possession or use of the Personal Property.

5.2 **Encumbrance.** Project Co shall protect and defend the Personal Property, at its own cost, from any and all Encumbrances except those arising through HMQ.

5.3 **Location.** Project Co shall keep and use the Personal Property only at the Service Delivery Points.

## ARTICLE 6 RETURN OF PERSONAL PROPERTY

6.1 **Return of Personal Property.** Project Co, upon the Termination Date or the termination of the leases, subleases, licences and sublicences granted by this Agreement, shall promptly make the Personal Property (including, in the case of the Software, all copies thereof) available to HMQ at the Service Delivery Points. If Project Co fails to make available the Personal Property within 15 days after the later of (i) the Termination Date or the earlier termination of the leases, subleases, licences and sublicences granted by this Agreement, and (ii) the date of receipt of notice from HMQ, HMQ shall have the right to enter upon any Project Co Premises where the Personal Property may be and remove it at Project Co's cost and expense, with or without legal process. Project Co waives any claim for damages that it might have by reason of any such entry or removal, and shall indemnify HMQ for all costs and expenses (including reasonable legal fees and expenses) incurred in connection with such entry or removal.

6.2 **Return Condition.** All Personal Property returned to HMQ shall be returned (or delivered) in the condition in which the Personal Property was required to be maintained by Project Co under this Agreement. If upon its return to HMQ the Personal Property is not in the condition required by this Agreement, HMQ may repair or replace any item or items of the Personal Property as HMQ, acting reasonably, considers necessary to place the Personal Property in the required condition. Project Co shall pay the costs of all such repairs and replacements on demand without any days of grace.

## ARTICLE 7 GENERAL REPRESENTATIONS AND WARRANTIES

7.1 **Representations and Warranties of HMQ.** HMQ makes the following representations and warranties with respect to itself to Project Co and acknowledges that Project Co is relying upon such representations and warranties in entering into this Agreement:

- (a) HMQ has the power and authority to enter into this Agreement; and
- (b) this Agreement constitutes a valid and legally binding obligation of HMQ enforceable in accordance with its terms, subject only to:
  - (i) Applicable Law affecting the enforceability of creditors' rights generally; and
  - (ii) limitations of general application respecting the enforcement of claims against Her Majesty the Queen in right of Ontario or Her property.

**7.2 Representations and Warranties of Project Co.** Project Co makes the following representations and warranties with respect to itself to HMQ and acknowledges that HMQ is relying upon such representations and warranties in entering into this Agreement:

- (a) the representations and warranties of Project Co contained in the Project Agreement continue to be true and correct;
- (b) Project Co has all necessary corporate or other power, authority and capacity to enter into this Agreement and to do all acts and things as are required under this Agreement to be done by it in accordance with the terms of this Agreement;
- (c) Project Co has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement;
- (d) Project Co has obtained, in each case at or before the time when it is required, and shall thereafter maintain for so long as the same is required in connection with this Agreement, all Project Co Permits, Licences and Approvals that are, or may be, necessary to perform its obligations under this Agreement;
- (e) this Agreement (and any other agreements, instruments, undertakings or documents given under or in connection with this Agreement) has been duly authorized, executed and delivered by Project Co and constitutes a valid and legally binding obligation of Project Co, enforceable against it in accordance with its terms, subject only to:
  - (i) limitations with respect to the enforcement of remedies, to bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors rights generally, and
  - (ii) the availability of equitable remedies such as specific performance and injunction; and
- (f) none of the authorization, execution or delivery of this Agreement, or compliance with or performance of the terms and conditions of this Agreement:
  - (i) has resulted or will result in a violation of the constating documents or by-laws of Project Co or a breach or violation of any shareholder agreement or any

resolutions passed by the board of directors or shareholders of Project Co or a breach or violation of any Applicable Law; or

- (ii) has resulted or will result in a breach of, or constitute a default under, any agreement, undertaking or instrument to which Project Co is a party or by which it or its property or assets is bound.

#### ARTICLE 8 RISK OF LOSS

8.1 **Risk of Loss.** Project Co shall bear all risk of damage to and loss or destruction of the Personal Property during the Term and until return of the Personal Property to HMQ in accordance with this Agreement.

#### ARTICLE 9 DEFAULT AND REMEDIES

9.1 **Remedies.** Upon the occurrence of a Project Co Event of Default and HMQ becoming entitled to exercise its remedies under Section 45.4 of the Project Agreement, HMQ may do any one (1) or more of the following:

- (a) HMQ may terminate the leases, subleases, licences and sublicences granted by this Agreement and require return of the Personal Property in accordance with Section 6.1.
- (b) HMQ may enter on the DE Premises to remove and repossess the Personal Property without being liable to Project Co for damages due to the repossession, except those resulting from HMQ's, its assignees', agents' or representatives', negligence or wilful misconduct.
- (c) HMQ may exercise any of its other rights and remedies provided for in the Project Agreement.

#### ARTICLE 10 ADDITIONAL PROVISIONS

10.1 **Notices.** Unless otherwise provided in this Agreement, all notices, requests, consents, approvals and other communications required or permitted by this Agreement shall be in writing and shall be given by personal delivery, or sent by electronic facsimile, or mailed by prepaid registered mail, or delivered by courier service. Notices shall be addressed to a party at its address as follows:

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave  
Building B, 3rd Floor  
Downsview, Ontario M3M 1J8

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

or in each case to such other address as any such party may furnish to the other or others from time to time under this Agreement. Any such notice may also be given by delivery to the addressee at its address provided for notices by leaving the same with a receptionist or other individual at such address. Such delivered notices shall be deemed to have been given on the first Business Day following such delivery. Any such notice may be given by facsimile to the number so provided (to be confirmed by mail), in which case the notice shall be deemed to have been given on the first Business Day following receipt of such notice. If there is a postal disruption any notice must be given either by delivery or by facsimile.

10.2 **Interest.** Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the interest rate then in effect, from the date such payment is due until payment and both before and after judgment.

10.3 **Assignment.** Project Co shall not, without the prior written consent of HMQ, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement except to the extent entitled to do so under the Project Agreement. HMQ may assign or otherwise dispose of the benefit of the whole or part of this Agreement to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co of such assignment or disposition.

10.4 **Arbitration of Disputes.** Unless otherwise provided in this Agreement, if any dispute arises between HMQ and Project Co under or relating in any way to this Agreement, the dispute shall be dealt with in accordance with Section 58(a) of the Project Agreement and Schedule 27 – Dispute Resolution Procedures.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**,  
as represented by the Minister of Transportation

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

Name: [REDACTED]

Title: [REDACTED]

For Information Purposes Only

*Signature Page to Lease and Licensing Agreement*

For Information Purposes Only



[REDACTED]

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

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

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

For Information Purposes Only

*Signature Page to Lease and Licensing Agreement*

**Schedule “A”  
Equipment**

The Equipment listed in the document entitled “MTO Hardware by Type, Location June 26, 2012” and made available to Project Co.

For Information Purposes Only

**Schedule “B”  
Software**

**1. HMQ Software**

- (a) Licensing and Control Systems.
- (b) Driver Licensing Subsystem.
- (c) DABS.
- (d) Financial Subsystem.
- (e) Stock Subsystem.
- (f) Head Office Administrator Subsystems.
- (g) Internet Road Test Booking System.

**2. Third Party Software**

[INTENTIONALLY DELETED]

**Schedule “C”  
HMQ Databases and HMQ Networks**

**1. HMQ Databases**

- (a) Database of driver information.
- (b) Database of driver photographs in relation to the photo card system administered by Kingston Card Production System.
- (c) Distributed Automated Booking Systems (DABS).

**2. HMQ Networks**

The SNA/SDLC WAN connection between each Service Delivery Point workstation and the HMQ Systems.

**SCHEDULE 11**  
**QUALITY MANAGEMENT AND AUDITS**  
[REDACTED]

For Information Purposes Only

**SCHEDULE 12**

**KEY PERFORMANCE INDICATORS**

<b>PART 1 DEFINITIONS .....</b>	<b>2</b>
<b>PART 2 KEY PERFORMANCE INDICATORS .....</b>	<b>3</b>
<b>PART 3 PERFORMANCE PENALTY APPLICATION .....</b>	<b>6</b>

For Information Purposes Only

PART 1  
DEFINITIONS

The following definitions shall have the following meanings:

- 1.1 **“Driver Transaction”** means the delivery of any driver examination product and/or service, through any Service Delivery Point, from the point where a customer makes contact with Project Co to the point where all steps required in the Policy Manuals have been correctly completed or the customer has ended the transaction.
- 1.2 **“Key Performance Indicator”** means the requirements described in Part 2 of Schedule 12.
- 1.3 **“Performance Penalty Application”** means the point at which a Performance Penalty may be applied as described in Part 3 of Schedule 12.
- 1.4 **“Rectification”** or **“Rectify”** means correcting the Performance Failure such that the Key Performance Indicator is achieved.
- 2.0 **“Resolve”** or **“Resolution”** means taking all reasonable steps to address a Complaint, General Enquiry, or Complex Enquiry such that the following occurs:
- (a) Taking reasonable actions to satisfy the Complaint such that no further action is required;
  - (b) Providing the customer with information to satisfy their Enquiry such that the Enquiry is finalized and addressed; and/or
  - (c) Coming to an agreement with the customer if the Enquiry or Complaint cannot be Resolved.
- For greater clarity, Resolution is deemed to have occurred if Project Co can clearly demonstrate that reasonable actions have been taken to address and finalize the Complaint, General or Complex Enquiry.
- 3.0 **“Respond”** means, following the receipt of a Complaint, General Enquiry, or Complex Enquiry through any Communication Channel, Project Co takes the following actions:
- (a) make contact with the customer;
  - (b) acknowledge receipt of the Complaint, General Enquiry or Complex Enquiry;
  - (c) identify and/or assess the nature of the Complaint or Enquiry; and/or
  - (d) advise the customer as to the expected Resolution time.
- 4.0 **“Written Correspondences”** means communication by way of e-mail, fax or mail.

PART 2  
**KEY PERFORMANCE INDICATORS**

Project Co shall be committed to continuous improvement and shall implement processes to facilitate this objective. Some obligations and requirements in the Project Agreement have a corresponding Key Performance Indicator that describes the criteria used to determine whether Project Co has delivered the DE Service to the standards required. The Key Performance Indicators are provided in Items 1 through 13 below. Failure to meet these Key Performance Indicators will lead to a Performance Failure as defined in Schedule 20, with the Performance Penalty being applied in accordance with Part 3 of Schedule 12 and calculated in accordance with Schedule 20.

- 1) Project Co shall prepare a Compliance Report and a Quality Management System Report and deliver it to the HMQ Representative within 5 Business Days after the end of each Reporting Period as set out in Schedule 14, Part 2 Item 2.1 and Item 2.2.
- 2) Project Co shall, at the request of HMQ Representative, acting reasonably, promptly provide additional requirements as set out in Schedule 14 Part 2 Item 2.3 within 5 Business Days, unless otherwise specified.
- 3) Project Co shall ensure that at all times, Driver Examiners, Driver Examination Trainers, Master Trainer and Customer Service Agents (CSA), comply with training requirements set out in Schedule 17 to support the delivery DE Services.
- 4) At each DE Premise, Project Co shall at all times:
  - (a) Verify Driver Transactions; and
  - (b) capture and record Driver Transactions fully, accurately and completely at the first instance of recording the transaction as set out in the Policy Manuals.
- 5) Measured at each DE Premises over each full Contract Month, unless it is beyond Project Co's control to comply, Project Co shall Rectify 100% of the errors within 3 Business Days from the time the error is discovered by any party. Project Co shall use Good Industry Practice to Rectify the errors and maintain records of the taken steps in the event details are requested by HMQ. In the case that Project Co is unable to comply for reasons beyond their control, Project Co shall demonstrate and keep records showing that it has taken all appropriate and reasonable steps in Rectifying the errors, this may include for example, contacting the applicant promptly and informing them of the need to return to the DE Premises to make the change.
- 6) Project Co shall advise the HMQ Representative of the occurrence of Notifiable Incident within the time frames described in Schedule 34. In the event of a Notifiable Incident, Project Co shall, if required by the HMQ, prepare and submit a Root Cause Analysis to the HMQ Representative within 5 Business Days:
  - (a) following the request by HMQ; and



- (b) in accordance with all other requirements for a Root Cause Analysis set out in Schedule 34 Part 2.
- 7) At each Service Delivery Point over each Contract Month, Project Co shall communicate effectively and promptly with the public and in a manner that appropriately reflects the initial contact made through any Communication Channel in accordance with the communication protocols set out in Schedule 18 and the standards of responsiveness outlined in parts (a) through (f) of this Item 7. Project Co shall note the summary of the communication (including the date and time received, and Response and Resolution provided) in a tracking system so that the file can be closed and the standard met.
- (a) Respond to all of General Enquiries and Resolve 95% of any required follow up within 1 Business Day.
- (b) Resolve 100% of any required follow up to General Enquiries within 3 Business Days.
- (c) Respond to all of Complex Enquiries and Resolve 99% of any required follow up within 2 Business Days.
- (d) Resolve 100% of any required follow up to Complex Enquiries within 3 Business Days. In the case that Project Co is unable to comply for reasons beyond their control, Project Co shall demonstrate and keep records showing that it has taken all appropriate and reasonable steps in responding to the Complex Enquiry.
- (e) Respond to all Complaints within 1 Business Day and Resolve 100% of Complaints within 2 Business Days. If a Resolution cannot be achieved within 2 Business Day, provide an interim Response and an anticipated date of reply within 2 Business Days.
- (f) Resolve any remaining Complaints within the agreed date of reply.
- 8) To maintain a high degree of customer satisfaction, measured over each Contract Month, Project Co shall operate and maintain a Telephone Service Channel as set out in Schedule 16 Part 11 and achieve the following service levels. For clarity, the calculation of the service levels shall adhere to Schedule 16 Part 11 Section 11.5.
- (a) Telephone Service Channel must be available 99.9% of the time.
- (b) Call handling service - 80% of calls placed to Telephone Service Channel not to exceed wait time of 30 seconds.
- (c) Voice message is available 99.9% of the time (7 days per week, 24 hours a day).
- (d) Call response - 100% callback on same Business Day to customer if voice messages are left before 10am (local time).
- (e) Call response - 95% callback to customers no later than 1 Business Day.
- (f) Call response - 100% callback to customers no later than 2 Business Days.

- (g) Call resolution - Resolve 75% of calls during initial contact.
  - (h) Call resolution - Resolve 100% of calls within 2 Business Days. In the case that Project Co is unable to comply for reasons beyond their control, Project Co shall demonstrate and keep records showing that it has taken all appropriate and reasonable steps in responding to the call.
  - (i) Call abandonment rate not to exceed 5% of the calls received.
  - (j) Call blockage not to exceed 1% of the calls received.
  - (k) Messaging for maintenance - provide notice of service unavailability 24 hours in advance of a scheduled maintenance.
  - (l) Unscheduled service interruption - provide notice via customer message when there is a unscheduled, non-routine downtime and / or maintenance.
- 9) Project Co shall offer road tests and air brake endorsement practical tests at the DE Premises of the applicant's choice, excluding Travel Points, not more than 42 days after the day on which applicant's request was made.
- 10) At each Service Delivery Point, Project Co shall follow the communication protocol requirements in accordance with Schedule 18.
- 11) Each Contract Month, Project Co shall achieve customer satisfaction survey ratings of not less than 85% at each Service Delivery Point.
- 12) Project Co shall ensure that at each DE Premise, the cumulative wait times for all lines for each applicant shall not exceed 20 minutes from the time of first joining a line to the time of being called to be served, for 90% of the applicants.
- 13) Project Co shall comply with all provisions of this Project Agreement and Applicable Laws, including without limitation, as set out in Schedules 7, 11, 13, 14, 15, 16, 17, 18, 19, 26, 34, 35 and 36.
- 14) Project Co shall ensure that all DE Premises as described in Schedule 7 – Service Delivery Points comply with the required Hours of Operation as described in Schedule 15 – DE Output Specifications.

PART 3  
PERFORMANCE PENALTY APPLICATION

Schedule 12, Part 2, Item Reference	Performance Penalty Application	Tier
1	(a) Applied each Contract Month for failure to deliver the Compliance Report in accordance with Schedule 14 Part 2 Item 2.1	1
	(b) Subsequently applied for each Business Day that Project Co fails to Rectify the Performance Failure in regards to Schedule 12 Part 2 Item 1	
2	(a) Applied each Contract Month for each Performance Failure in regards to Schedule 12 Part 2 Item 2	3
	(b) Subsequently applied for each Business Day that Project Co fails to Rectify each Performance Failure in regards to Schedule 12 Part 2 Item 2	
3	Applied each Contract Month for each Driver Examiner, Driver Examination Trainer, Master Trainer and CSA that fails to meet the requirements of Schedule 17	3
4	Applied each Contract Month for each Driver Transaction where Project Co does not comply with Schedule 12 Part 2 Item 4	1
5	Applied at each DE Premise each Contract Month where one or more errors are not Rectified within three (3) Business Days	2
6	(a) Applied each Contract Month for each failure to notify HMQ of Notifiable Incidents in accordance with Schedule 34, Part 3.	1
	(b) Applied each Contract Month for each failure to provide the Root Cause Analysis in accordance Schedule 34, Part 2	2
	(c) Subsequently applied each Contract Month for each failure to implement the proposed solution within the timeframe defined through the Root Cause Analysis	

Schedule 12, Part 2, Item Reference	Performance Penalty Application	Tier
7	(a) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (a)	2
	(b) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (b)	3
	(c) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (c)	2
	(d) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (d)	3
	(e) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (e)	2
	(f) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (f)	3
8	(a) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(a)	2
	(b) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(b)	2
	(c) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(c)	2
	(d) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(d)	2
	(e) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(e)	2

Schedule 12, Part 2, Item Reference	Performance Penalty Application	Tier
8	(f) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(f)	3
	(g) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(g) In the event that the Performance Failure results in an application of a Performance Penalty under Schedule 12 Part 2 Item 7, a subsequent Performance Penalty under this provision will not apply.	2
	(h) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(h) In the event that the Performance Failure results in an application of a Performance Penalty under Schedule 12 Part 2 Item 7, a subsequent Performance Penalty under this provision will not apply.	3
	(i) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(i)	2
	(j) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(j)	2
	(k) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(k)	3
	(l) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(l)	3
9	Applied each Contract Month for each DE Full Time Site and each DE Mandatory Replacement Premises that does not meet the requirements of Schedule 12 Part 2 Item 9	1
10	Applied each Contract Month for each Performance Failure in regards to Schedule 12 Part 2 Item 10, with the exception of Performance Failures in regards to Schedule 18 Part 4 Section 4.1 Item (e) and Schedule 18 Part 4 Section 4.1 Item (f). For greater clarity, if Project Co does not meet the requirements of Schedule 18 Part 4 Section 4.1 Item (e) and/or Schedule 18 Part 4 Section 4.1 Item (f), the Performance Penalty will be applied as per Schedule 12 Part 3 Item 7.	3

Schedule 12, Part 2, Item Reference	Performance Penalty Application	Tier
11	Applied each Contract Month for each Performance Failure at each Service Delivery Point against the requirements set out in Schedule 12 Part 2 Item 11	3
12	Applied each Contract Month for each DE Premise for each Business Day where the 20 min wait time has been exceeded as set out in Schedule 12 Part 2 Item 12	1
13	Applied each Contract Month for each Performance Failure in regards to Schedule 12 Part 2 Item 13  In the event that the Performance Failure results in an application of a Performance Penalty under another Key Performance Indicator, a subsequent Performance Penalty under this provision will not apply.	2
14	Applied each Business Day for each DE Premises where the Hours of Operation have not been met.	1

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

**[REDACTED]**

For Information Purposes Only

**SCHEDULE 14**  
**REPORTING OBLIGATIONS**  
**[REDACTED]**

For Information Purposes Only



**SCHEDULE 15**  
**DE OUTPUT SPECIFICATIONS**  
**[REDACTED]**

For Information Purposes Only

**SCHEDULE 16**  
**IT OUTPUT SPECIFICATIONS**  
**[REDACTED]**

For Information Purposes Only

**SCHEDULE 17**

**EMPLOYEES AND TRAINING**

**[REDACTED]**

For Information Purposes Only

**SCHEDULE 18**

**COMMUNICATIONS PROTOCOL**

<b>PART 1 DEFINITIONS .....</b>	<b>2</b>
<b>PART 2 MEDIA .....</b>	<b>3</b>
<b>PART 3 PUBLIC DISCLOSURE AND MEDIA RELEASES .....</b>	<b>5</b>
<b>PART 4 COMPLAINT HANDLING AND RESOLUTION.....</b>	<b>6</b>

For Information Purposes Only

PART 1  
DEFINITIONS

The following definitions shall have the following meanings:

1.1 **“Communication Channel”** means:

- a) in person at DE Premises;
- b) by telephone through the Telephone Service Channel
- c) e-mail;
- d) fax; and
- e) mail

1.2 **“Complaint”** means a written statement from the public, filed in accordance with the complaint handling and resolution plan, that expresses any level of dissatisfaction with the performance of Project Operations.

1.3 **“Complex Enquiries”** means enquiries received through any Communication Channel from the public that require research, verification, tracking information or consulting with HMQ (examples include but not limited to: authorized reinstatement, resolving a duplicate driving record)

1.4 **“Enquiry”** means Complex Enquiries and/or General Enquiries.

1.5 **“General Enquiries”** means enquiries received through any Communication Channel from the public that do not require input, review, or approval from HMQ and can be Resolved solely by Project Co

PART 2  
MEDIA

## 2.1 Project Co Responsibilities

- (a) At least 30 days prior to the Commencement Date, Project Co shall have developed, in collaboration with HMQ, a communications protocol to apply to both HMQ and Project Co, which will be implemented and maintained throughout the Project Term.
- (b) Project Co will assume a supporting role with respect to media communications related to the Project.
- (c) Project Co will be responsible for:
  - i. providing an identified, dedicated media-trained Communications Director (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications and issues management; Communications Director shall be responsible for communicating and managing the flow of information with the media and the public, and collaborating with HMQ;
  - ii. responding to communications issues in accordance with agreed timeframes;
  - iii. maintaining and updating Project Co's Project website, as required subject to review and approval by HMQ;
  - iv. reviewing and/or providing communications and/or technical materials reasonably requested by HMQ;
  - v. updating, in collaboration with HMQ, internal/external stakeholders, as required, including involvement and participation in community events;
  - vi. providing the public/media reasonable access to the DE Premises for milestone events;
  - vii. directing all media enquiries and interview requests to HMQ's lead communications contact;
  - viii. maintaining a written record of all public Enquiries, Complaints and communications and providing copies to HMQ's lead communications contact on an agreed upon basis (or immediately if urgent);
  - ix. reporting to HMQ on communications matters on an agreed upon basis;
  - x. participating in HMQ communications meetings and assigning a communications representative and/or a project manager, as required;
  - xi. during a crisis situation, ensuring and making available sufficient resources to work effectively with HMQ and proactively manage and perform its communications responsibilities; and
  - xii. developing a communications protocol in respect of Project Co's responsibilities set out in this section 2.1.

**2.2 HMQ Responsibilities**

- (a) HMQ will assume the lead communications role. HMQ will take primary responsibility for all media communications matters and will be responsible for:
- i. providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
  - ii. providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
  - iii. acting as primary media contact for the Project;
  - iv. providing final review and approval of all public communications materials;
  - v. communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
  - vi. review and approve Project Co's Project website content and updates, as required; and
  - vii. providing coordinated updates to internal/external stakeholders, as required.

PART 3  
**PUBLIC DISCLOSURE AND MEDIA RELEASES**

**3.1 Project Co Responsibilities**

- (a) Project Co shall obtain HMQ's written consent, in HMQ's sole discretion, prior to issuing or disseminating any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium):
  - (i) relating to the Project Operations, this Project Agreement, HMQ activities or any matters related thereto;
  - (ii) required by Applicable Law; and
  - (iii) that makes use of HMQ's name or refers to HMQ, directly or indirectly
- (b) Project Co shall comply, and shall ensure that all Project Co Parties comply, at all times, with HMQ's media release and publicity protocols or guidelines, which may be updated by HMQ from time to time.

**3.2 HMQ Responsibilities**

- (a) HMQ shall obtain Project Co's written consent, prior to issuing or disseminating any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium):
  - (i) that makes use of Project Co's name or refers to Project Co, directly or indirectly.



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PART 4  
COMPLAINT HANDLING AND RESOLUTION

**4.1 Project Co Responsibilities**

- (a) At least 30 days prior to the Commencement Date, Project Co shall have developed, in collaboration with HMQ, a complaint handling and resolution plan, which will be implemented and maintained throughout the Project Term.
- (b) Project Co shall at all times give the views and perspectives of various stakeholders respectful consideration and due weight.
- (c) Project Co shall at all times capture, record, and track each Complaint, received in any form and through any Communication Channel, fully, accurately, and completely.
- (d) Project Co shall inform the public on aspects of the Project Operations, as instructed or advised by HMQ from time to time.
- (e) Project Co shall communicate effectively and promptly with the public, in a manner that appropriately reflects the initial contact made and in line with the standards of responsiveness set out in Schedule 12 Part 2 Item 7.
- (f) Project Co shall Respond and Resolve all General Enquiries, Complex Enquiries, and Complaints received through any form of Communication Channel in accordance with Schedule 12 Part 2 Item 7.

**SCHEDULE 19**  
**CUSTOMER SATISFACTION SURVEYS**  
**[REDACTED]**

For Information Purposes Only

**SCHEDULE 20****PAYMENT MECHANISM****Part A:  
DEFINITIONS****1. DEFINITIONS**

- 1.1 **“Actual CPI Service Fee”** has the meaning given in Section 7.1 of Part B of this Schedule 20.
- 1.2 **“Adjusted Annual Concession Payment”** has the meaning as given in Section 3.1 of Part B of this Schedule 20.
- 1.3 **“Annual Concession Payment”** has the meaning as given in Section 3.1 of Part B of this Schedule 20.
- 1.4 **“Base Date”** means January 1, 2013.
- 1.5 **“Bedding-In”** means the integration of Project Operations as described in Section 2 of Part C of this Schedule 20.
- 1.6 **“Bedding-In Period”** means the six-month period following the Commencement Date.
- 1.7 **“Commencement Date”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.8 **“Compliance Report”** means the report specified in Schedule 14 – Reporting Obligations.
- 1.9 **“Concession Payment”** means either the Annual Concession Payment or the Monthly Concession Payment.
- 1.10 **“Concession Payment Fee Adjustment”** means the Indexed Fee Deficiency Adjustment, Indexed Fee Excess Adjustment, and Non-Indexed Fee Excess Adjustment.
- 1.11 **“Concession Payment Fee Adjustment Review Date”** means each anniversary of the Commencement Date.
- 1.12 **“Contract Day”** means a 24 hour period commencing at midnight at the start of the relevant day.
- 1.13 **“Contract Month”** means a calendar month, except with respect to the first Contract Month, which runs from the Commencement Date until the end of the calendar month in which the Commencement Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.
- 1.14 **“CPI”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.15 **“DE Services”** has the meaning given in Schedule 1 – Definitions and Interpretation.

- 1.16 **“DE Service Fees”** means any service fee in respect of DE Services set forth in:
- (a) Section 1 to Section 10, inclusive, of Appendix A of this Schedule 20; and
  - (b) Section 1 to Section 7, inclusive, of Appendix B of this Schedule 20.
- 1.17 **“Escalation Factor”** means the escalation factor calculated in accordance with Section 4.1 of Part C of this Schedule 20.
- 1.18 **“Financial Close Date”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.19 **“Financial Model”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.20 **“HMQ Licensing Fee”** has the meaning given in Schedule 35 – Fee Collection.
- 1.21 **“HMQ Representative”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.22 **“Indexed DE Services”** means the DE Services as identified in Appendix A to this Schedule 20.
- 1.23 **“Indexed Fee Deficiency Adjustment”** has the meaning given Section 4 of Part B of this Schedule 20.
- 1.24 **“Indexed Fee Excess Adjustment”** has the meaning given Section 5 of Part B of this Schedule 20.
- 1.25 **“Key Performance Indicator”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.26 **“Lower Band Inflation Rate”** means [REDACTED]%.
- 1.27 **“Lower Band Service Fee”** has the meaning given in Section 7.4 of Part B of this Schedule 20.
- 1.28 **“Major Reporting Omission Failure”** has the meaning given in Section 1.3 of Part E in this Schedule 20.
- 1.29 **“Maximum Monthly Performance Penalty Amount”** means the sum of \$[REDACTED], index-linked.
- 1.30 **“Ministry”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.31 **“Monthly Concession Payment”** means the sum in Canadian Dollars payable by Project Co to HMQ in connection with the provision of the Project Operations in accordance with the Project Agreement, as calculated in Section 2.2 of Part B of this Schedule 20.
- 1.32 **“Monthly Service Fee Revenue”** means the total of all services fees with respect to DE Services collected by Project Co in any given Contract Month.
- 1.33 **“MVAC Fee”** has the meaning given in Schedule 35 – Fee Collection.

- 1.34 **“Non-Indexed DE Services”** means the DE Services as identified in Appendix B to this Schedule 20.
- 1.35 **“Non-Indexed Fee Excess Adjustment”** has the meaning given Section 6 of Part B of this Schedule 20.
- 1.36 **“Performance Failure”** means an incident or state of affairs which does not meet or comply with the Key Performance Indicators given in Part 2 of Schedule 12 – Key Performance Indicators.
- 1.37 **“Performance Penalty”** means a penalty which may be applied to the Monthly Concession Payment in respect of a Performance Failure given in Appendix D to this Schedule 20.
- 1.38 **“Performance Penalty Application”** has the meaning given in Part 3 of Schedule 12 – Key Performance Indicators.
- 1.39 **“Project Operations”** has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.40 **“Ratchet”** has the meaning given in Section 3.3 of Part C in this Schedule 20.
- 1.41 **“Rectification”** has the meaning given to it in Schedule 12 - Key Performance Indicators; and **“Rectify”** or **“Rectified”** shall be construed accordingly.
- 1.42 **“Regular Reporting Omission Failure”** has the meaning given in Section 1.3 of Part E in this Schedule 20.
- 1.43 **“Repeated Performance Failure”** has the meaning given in Section 7 of Part C in this Schedule 20.
- 1.44 **“Reporting Omission Failure”** means a Regular Reporting Omission Failure or a Major Reporting Omission Failure.
- 1.45 **“Response”** has the meaning given in Schedule 12 – Key Performance Indicators.
- 1.46 **“Unearned Revenue”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.47 **“Unearned Revenue Adjustment”** has the meaning given in Section 2.2 of Part B of this Schedule 20.
- 1.48 **“Up-Front Concession Payment”** means an amount equal to \$[REDACTED] in respect of the concession rights granted under the Project Agreement, payable to HMQ by Project Co in the manner given in Section 1.1 of Part B of this Schedule 20.
- 1.49 **“Upper Band Inflation Rate”** means [REDACTED]%.
- 1.50 **“Upper Band Service Fee”** has the meaning given in Section 7.3 of Part B of this Schedule 20.

Part B:  
CALCULATION OF CONCESSION PAYMENTS

**1. UP-FRONT CONCESSION PAYMENT**

- 1.1 The Up-Front Concession Payment shall be paid by Project Co to HMQ on Financial Close.

**2. MONTHLY CONCESSION PAYMENT**

- 2.1 The Monthly Concession Payment shall be paid by Project Co to HMQ within 10 Business Days of the end of each Contract Month.
- 2.2 The Monthly Concession Payment payable in respect of any Contract Month shall be calculated in accordance with the following formula:

$$\text{MCPn} = (\text{AAPn}/12) + \Sigma \text{PPn} - \text{URA}$$

where

MCPn is the Monthly Concession Payment for the Contract Month for which the formula is to be applied;

AAPn is the Adjusted Annual Concession Payment for the relevant Contract Year, calculated in accordance to Section 3 of this Part B;

$\Sigma \text{PPn}$  is the sum of Performance Penalties in respect of the relevant Contract Month in relation to Performance Failures calculated in accordance with the provisions set out in Part C of this Schedule 20; and

URA is the Unearned Revenue Adjustment as described in Section 2.5 of this Part B.

- 2.3 In the Contract Month in which the Commencement Date falls and in the last Contract Month of the Project Term, a *pro rata* adjustment shall be made to reflect the actual number of business days in the relevant Contract Month from and including the Commencement Date (for the first month) and up to and including the last day of the Project Term (for the last month).
- 2.4 Project Co shall pay to HMQ the Monthly Concession Payment in accordance with the provisions of this Schedule 20 and Section 4.6 of the Project Agreement.
- 2.5 The Monthly Concession Payment shall be adjusted from time to time to take account of Unearned Revenue as described in Schedule 35 – Fee Collection.

**3. ADJUSTED ANNUAL CONCESSION PAYMENT**

- 3.1 The Adjusted Annual Concession Payment for any Contract Year shall be calculated in accordance with the following formula:

$$\text{AAPn} = \text{ACPn} + \text{IFDAn} + \text{IFEAn} + \text{NIFEAn}$$

Where:

AACP<sub>n</sub> is the Adjusted Annual Concession Payment for the relevant Contract Year as adjusted by the Concession Payment Fee Adjustment for the applicable Contract Year;

ACP<sub>n</sub> is the Annual Concession Payment for the relevant Contract Year as set out in Appendix F to this Schedule 20;

IFD<sub>An</sub> is the Indexed Fee Deficiency Adjustment calculated in accordance with Section 4 of this Part B;

IFE<sub>An</sub> means the Indexed Fee Excess Adjustment calculated in accordance with Section 5 of Part B of this Schedule 20;

NIFE<sub>An</sub> means the Non-Indexed Fee Excess Adjustment calculated in accordance with Section 6 of Part B of this Schedule 20; and

3.2 No later than 60 days prior to each Concession Payment Fee Adjustment Review Date, Project Co will prepare and submit to HMQ an analysis indicating the amount of the Concession Payment Fee Adjustment. HMQ and Project Co, both acting reasonably, will agree on the Concession Payment Fee Adjustment to be applied to the Annual Concession Payment for the next Contract Year.

3.3 For clarity, the DE Service Fees in any given Contract Year will not be decreased relative to the DE Service Fees used in the previous Contract Year.

#### **4. INDEXED FEE DEFICIENCY ADJUSTMENT**

4.1 The Indexed Fee Deficiency Adjustment will only be applicable with respect to Indexed DE Services for Contract Years in which:

(a)  $SFs_{n}^{HMQ}$  is less than or equal to  $SFs_{n}$ .

Where:

$SFs_{n}^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below; and

$SFs_{n}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below.

4.2 Subject to Section 4.1 of Part B to this Schedule 20 above, the Indexed Fee Deficiency Adjustment shall be calculated in accordance with the following formula:

(a) If  $SFs_{n}^{HMQ}$  is greater than  $SFs_{n}^{UB}$ ,

$$IFD_{An} = \Sigma\{VOL_{s,n} \times [((SF_{s,n}^{HMQ} - SF_{s,n}^{UB}) \times 0.5) + ((SF_{s,n}^{HMQ} - SF_{s,n}) \times 0.5)]\}$$

Where:

$SFs_{n}^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

4.3 Subject to Section 4.1 of Part B to this Schedule 20 above, the Indexed Fee Deficiency Adjustment shall be calculated in accordance with the following formula:

- (a) If  $SFs,n$  is greater than  $SFs,n^{UB}$ ; and
- (b) If  $SFs,n^{HMQ}$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ ,

$$IFDAn = \Sigma\{VOLs,n \times [(SFs,n^{HMQ} - SFs,n^{UB}) + ((SFs,n^{UB} - SFs,n) \times 0.5)]\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

4.4 Subject to Section 4.1 of Part B to this Schedule 20 above, the Indexed Fee Deficiency Adjustment shall be calculated in accordance with the following formula:

- (a) If  $SFs,n$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ , and
- (b) If  $SFs,n^{HMQ}$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ ,

$$IFDAn = \Sigma\{VOLs,n \times (SFs,n^{HMQ} - SFs,n)\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below;



$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

4.5 Subject to Section 4.1 of Part B to this Schedule 20 above, the Indexed Fee Deficiency Adjustment shall be calculated in accordance with the following formula:

- (a) If  $SFs,n$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ , and
- (b) If  $SFs,n^{HMQ}$  is less than  $SFs,n^{LB}$ ,

$$IFDAn = \Sigma\{VOLs,n \times [(SFs,n^{LB} - SFs,n) + (SFs,n^{HMQ} - SFs,n^{LB})]\}$$

Where:

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

4.6 Subject to Section 4.1 of Part B to this Schedule 20 above, the Indexed Fee Deficiency Adjustment shall be calculated in accordance with the following formula:

- (a) If  $SFs,n$  is less than  $SFs,n^{LB}$ , and
- (b) If  $SFs,n^{HMQ}$  is less than or equal to  $SFs,n$ ,

$$IFDAn = \Sigma\{VOLs,n \times [((SFs,n - SFs,n^{LB}) \times 0.5) + (SFs,n^{HMQ} - SFs,n)]\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below;

SFs,n<sup>LB</sup> is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below; and

VOLs,n is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

- 4.7 Subject to Section 4.1 of Part B to this Schedule 20 above, the Indexed Fee Deficiency Adjustment shall be calculated in accordance with the following formula:

(a) If SFs,n is greater than SFs,n<sup>UB</sup>, and

(b) If SFs,n<sup>HMQ</sup> is less than SFs,n<sup>LB</sup>,

$$IFDAn = \Sigma \{VOLs,n \times [(SFs,n^{HMQ} - SFs,n^{UB}) + ((SFs,n^{UB} - SFs,n) \times 0.5)]\}$$

Where:

SFs,n<sup>HMQ</sup> is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

SFs,n<sup>UB</sup> is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

SFs,n is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below;

SFs,n<sup>LB</sup> is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below; and

VOLs,n is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

- 4.8 For clarity, the formulae in Sections 4.2 to 4.7 above are intended to be applied for each Indexed DE Service as applicable.

## 5. INDEXED FEE EXCESS ADJUSTMENT

- 5.1 The Indexed Fee Excess Adjustment will only be applicable with respect to Indexed DE Services for Contract Years in which:

(a) SFs,n<sup>HMQ</sup> is greater than SFs,n.

Where:

SFs,n<sup>HMQ</sup> is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below; and

SFs,n is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below.

5.2 Subject to Section 5.1 of Part B to this Schedule 20 above, the Indexed Fee Excess Adjustment shall be calculated in accordance with the following formula:

(a) If  $SFs,n$  is greater than  $SFs,n^{UB}$ ,

$$IFEAn = \Sigma\{VOLs,n \times [((SFs,n - SFs,n^{UB}) \times 0.5) + (SFs,n^{HMQ} - SFs,n)]\}$$

Where:

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

5.3 Subject to Section 5.1 of Part B to this Schedule 20 above, the Indexed Fee Excess Adjustment shall be calculated in accordance with the following formula:

(a) If  $SFs,n$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ , and

(b) If  $SFs,n^{HMQ}$  is greater than  $SFs,n^{UB}$ ,

$$IFEAn = \Sigma\{VOLs,n \times (SFs,n^{HMQ} - SFs,n)\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

5.4 Subject to Section 5.1 of Part B to this Schedule 20 above, the Indexed Fee Excess Adjustment shall be calculated in accordance with the following formula:

(a) If  $SFs,n$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ , and

(b) If  $SFs,n^{HMQ}$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ ,

$$IFEAn = \Sigma\{VOLs,n \times (SFs,n^{HMQ} - SFs,n)\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

5.5 Subject to Section 5.1 of Part B to this Schedule 20 above, the Indexed Fee Excess Adjustment shall be calculated in accordance with the following formula:

(a) If  $SFs,n$  is less than  $SFs,n^{LB}$ , and

(b) If  $SFs,n^{HMQ}$  is greater than or equal to  $SFs,n^{LB}$  and less than or equal to  $SFs,n^{UB}$ ,

$$IFEAn = \Sigma\{VOLs,n \times [((SFs,n - SFs,n^{LB}) \times 0.5) + (SFs,n^{HMQ} - SFs,n)]\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

5.6 Subject to Section 5.1 of Part B to this Schedule 20 above, the Indexed Fee Excess Adjustment shall be calculated in accordance with the following formula:

(a) If  $SFs,n$  is less than  $SFs,n^{LB}$ , and

(b) If  $SFs,n^{HMQ}$  is less than  $SFs,n^{LB}$ ,

$$IFEAn = \Sigma\{VOLs,n \times [((SFs,n - SFs,n^{LB}) \times 0.5) + (SFs,n^{HMQ} - SFs,n)]\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

5.7 Subject to Section 5.1 of Part B to this Schedule 20 above, the Indexed Fee Excess Adjustment shall be calculated in accordance with the following formula:

(a) If  $SFs,n$  is less than  $SFs,n^{LB}$ , and

(b) If  $SFs,n^{HMQ}$  is greater than  $SFs,n^{UB}$ ,

$$IFEAn = \Sigma\{VOLs,n \times [((SFs,n - SFs,n^{LB}) \times 0.5) + (SFs,n^{HMQ} - SFs,n)]\}$$

Where:

$SFs,n^{HMQ}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$SFs,n$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.1 below;

$SFs,n^{UB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.3 below;

$SFs,n^{LB}$  is the service fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.4 below; and

$VOLs,n$  is the volume of transactions for the applicable Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix A to this Schedule 20.

5.8 For clarity, the formulae in Sections 5.2 to 5.7 above are intended to be applied for each Indexed DE Service as applicable.

## 6. NON-INDEXED FEE EXCESS ADJUSTMENT

6.1 The Non-Indexed Fee Excess Adjustment will only be applicable with respect to Non-Indexed DE Services.

- 6.2 The Non-Indexed Fee Excess Adjustment shall be calculated in accordance with the following formula:

$$\text{NIFEAn} = \Sigma \{ \text{VOLs,n} \times (\text{SFs,n}^{\text{HMQ}} - \text{SFs,o}) \}$$

Where:

$\text{SFs,n}^{\text{HMQ}}$  is the service fee for the applicable Non-Indexed DE Service “s” on the relevant Contract Year “n” as determined in Section 7.2 below;

$\text{SFs,o}$  is the service fee for the applicable Non-Indexed DE Service “s” on the Base Date, as set out in Appendix B to this Schedule 20; and

$\text{VOLs,n}$  is the volume of transactions for the applicable Non-Indexed DE Service “s” at the relevant Contract Year “n”, as set out in Appendix B to this Schedule 20.

- 6.3 For clarity, the formula in Section 6.2 above is intended to be applied for each Non-Indexed DE Service as applicable.
- 6.4 The Non-Indexed Fee Excess Adjustment calculated in Section 6.2 above shall be made excluding the HMQ Licensing Fee and MVAC Fee, in accordance to relevant provisions set out in Schedule 35 – Fee Collection.

## 7. SERVICE FEE CALCULATIONS

- 7.1 The Actual CPI Service Fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” shall be calculated as follows:

$$\text{SFs,n} = \text{SFs,o} \times \text{ESCn}$$

Where:

$\text{SFs,o}$  is the service fee for the applicable Indexed DE Service “s” on the Base Date, as set out in Appendix A to this Schedule 20; and

$\text{ESCn}$  is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of Part C.

- 7.2 The actual service fee for the applicable Indexed DE Service “s” or Non-Indexed DE Service “s” on the relevant Contract Year “n” shall be as determined by HMQ and established at a multiple of \$0.25.
- 7.3 The Upper Band Service Fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” shall be calculated as follows:

$$\text{SFs,n}^{\text{UB}} = \text{SFs,o} \times (\text{CPI}^{\text{UB}} / \text{CPIo})$$

Where:

SFs,o is the service fee for the applicable Indexed DE Service “s” on the Base Date, as set out in Appendix A to this Schedule 20;

CPI<sup>nUB</sup> is the value of Upper Band CPI on January 1 of the relevant Contract Year “n”, to be determined by reference to the relevant calculated index in the month of December most recently preceding the indexation date using the Upper Band Inflation Rate; and

CPIo is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month of December most recently preceding the Base Date.

- 7.4 The Lower Band Service Fee for the applicable Indexed DE Service “s” on the relevant Contract Year “n” shall be calculated as follows:

$$SFs,n^{LB} = SFs,o \times (CPI^{nLB}/CPIo)$$

Where:

SFs,o is the service fee for the applicable Indexed DE Service “s” on the Base Date, as set out in Appendix A to this Schedule 20;

CPI<sup>nLB</sup> is the value of Lower Band CPI on January 1 of the relevant Contract Year “n”, to be determined by reference to the relevant calculated index in the month of December most recently preceding the indexation date using the Lower Band Inflation Rate; and

CPIo is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month of December most recently preceding the Base Date.

- 7.5 For clarity, the calculated index for CPI<sup>nUB</sup> and CPI<sup>nLB</sup> in Sections 7.3 and 7.4 above, respectively, shall be calculated with reference to CPIo, rounded to the nearest tenth of a whole number, and mutually agreed between HMQ and Project Co.
- 7.6 For clarity, the results of the formulae (where applicable) for SFs,n, SFs,n<sup>UB</sup>, SFs,n<sup>LB</sup> and calculated in Sections 7.1 to 7.4 above shall be rounded to the nearest \$0.25.

Part C:  
PERFORMANCE PENALTIES

**1. ENTITLEMENT TO APPLY PERFORMANCE PENALTIES**

- 1.1 If at any time during the Operational Term a Performance Failure shall occur, HMQ shall, subject to Sections 1 and 2 of this Part C, be entitled to add a Performance Penalty to the relevant Monthly Concession Payment in respect of that Performance Failure.
- 1.2 The maximum aggregate of all Performance Penalties that HMQ can add to the Monthly Concession Payment in respect of any Contract Month shall be the Maximum Monthly Performance Penalty Amount relating to that Contract Month.

**2. BEDDING-IN PERIOD**

- 2.1 During the Bedding-In Period, the following provision shall apply with the exception of Performance Penalties in respect of Schedule 12, Part 3, item reference 14:
- (a) during the first month of the Bedding-In Period, no Performance Penalties may be applied in respect of Performance Failures;
  - (b) during the second month of the Bedding-In Period, Performance Penalties applied in respect of Performance Failures shall be reduced by [REDACTED]%;
  - (c) during the third month of the Bedding-In Period, Performance Penalties applied in respect of Performance Failures shall be reduced by [REDACTED]%;
  - (d) during the fourth month of the Bedding-In Period, Performance Penalties applied in respect of Performance Failures shall be reduced by [REDACTED]%;
  - (a) during the fifth month of the Bedding-In Period, Performance Penalties applied in respect of Performance Failures shall be reduced by [REDACTED]%; and
  - (b) during the sixth month of the Bedding-In Period, Performance Penalties applied in respect of Performance Failures shall be reduced by [REDACTED]%.
- 2.2 For clarity, the Bedding-In Period provisions do not apply to Performance Penalties in respect of Schedule 12, Part 3, item reference 14.
- 2.3 For clarity, the reduced Performance Penalties calculated in Section 2.1 above shall be rounded to the nearest whole dollar.

**3. PERFORMANCE PENALTIES FOR PERFORMANCE FAILURES**

- 3.1 Subject to this Part C, the amount to be added to the Monthly Concession Payment in respect of any Performance Failure shall be the aggregate of Performance Penalty amounts calculated in accordance with the following formula in respect of all Performance Failures:

$$PP_n = PP_o \times ESC_n \times R$$



Where:

PPn is the Performance Penalty in respect of any Performance Failure applicable to the relevant Contract Month;

PPo is the Performance Penalty in respect of any Performance Failure as set out in Appendix D to this Schedule 20; and

ESCn is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part C.

R is the Ratchet where applicable, which may be applied in accordance with Section 3.3 of this Part C.

- 3.2 For the avoidance of doubt, if more than one Performance Failure occurs in relation to a common root cause, a Performance Penalty for each Performance Failure shall continue to apply.
- 3.3 Performance Penalties in respect of Schedule 12, Part 3, item reference 4 only shall be subject to application of the Ratchet as follows:
- (a) the Performance Penalties in respect of Driver Transactions less than or equal to [REDACTED]% of total Driver Transactions for the Contract Month shall have a Ratchet of **1.0** applied to each such Performance Penalty;
  - (b) the Performance Penalties in respect of Driver Transactions greater than [REDACTED]% of total Driver Transactions for the Contract Month to less than or equal to [REDACTED]% of total Driver Transactions for the Contract Month shall have a Ratchet of **1.5** applied to each such Performance Penalty; and
  - (c) the Performance Penalties in respect of Driver Transactions greater than [REDACTED]% of total Driver Transactions for the Contract Month shall have a Ratchet of **2.0** applied to each such Performance Penalty.

#### **4. ESCALATION FACTOR**

- 4.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$\text{ESCn} = \text{CPI}_n / \text{CPI}_o$$

Where:

ESCn is the escalation factor applicable to the relevant Contract Year;

CPI<sub>n</sub> is the value of CPI on January 1 of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month of December most recently preceding the indexation date; and

CPI<sub>o</sub> is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month of December most recently preceding the Base Date.

**5. PERFORMANCE FAILURE**

- 5.1 Performance Penalties shall be applied with respect to Performance Failures in accordance to the Performance Penalty Application table in Part 3 of Schedule 12 – Key Performance Indicators.
- 5.2 When carrying out a Rectification, Project Co shall act in accordance with Applicable Law, Good Industry Practice, and relevant related Ministry policies and requirements. Failure to do so may be deemed to be a new Performance Failure.

**6. INTENTIONALLY LEFT BLANK****7. REPEATED PERFORMANCE FAILURES**

- 7.1 Notwithstanding that Project Co completes a Rectification in respect of a Performance Failure, there shall be deemed to be a Repeated Performance Failure on the occurrence of:
- (a) the third such Performance Failure which occurs as part of three consecutive Performance Failures and each such consecutive Performance Failure thereafter,
- provided that:
- (b) each such Performance Failure is in connection with the same Key Performance Indicator standard set out in Schedule 12 - Key Performance Indicators and occurs at the same Service Delivery Point; or
  - (c) whether the Performance Failures occur in the same Service Delivery Point there is reason to believe that the root cause of each Performance Failure is the same.
- 7.2 If the same such Performance Failure occurs as described in Section 7.1 of Part C in this Schedule 20, a Repeated Performance Failure shall be deemed to have occurred in respect of each and every consecutive Performance Failure beginning the third consecutive Performance Failure (as the case may be).
- 7.3 The amount of the Performance Penalty in respect of a Repeated Performance Failure shall be equal to [REDACTED]% of the original Performance Penalty in respect of the Performance Failure, index-linked using the Escalation Factor as referred to in Section 4.1 of Part C in this Schedule 20.
- 7.4 For clarity, application of a Performance Penalty in respect of a Repeated Performance Failure shall be in addition to the Performance Penalty in respect of the relevant consecutive Performance Failure.
- 7.5 This Section 7 shall not apply to Key Performance Indicators 4, 11, and 13 in Part 2 of Schedule 12, - Key Performance Indicators.

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- 10. INTENTIONALLY LEFT BLANK

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Part D:  
REVIEW OF PERFORMANCE PENALTIES

**1. ANNUAL REVIEW**

- 1.1 The identification of Key Performance Indicators, Performance Failures and Performance Penalties shall be reviewed by HMQ and Project Co at any time if requested by either Party but in any event shall be reviewed at least once in every Contract Year.
- 1.2 HMQ and Project Co shall act reasonably and diligently in carrying out the review.
- 1.3 For the avoidance of doubt, the Parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the relevant aspect of the Project Operations or the magnitude of Performance Penalties. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 22 shall apply.
- 1.4 HMQ and Project Co may in respect of each matter the subject of the review either:
- (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
  - (b) agree that adjustments to the relevant matter are to take effect in the Contract Year immediately following the review.

Part E:  
FAILURE BY PROJECT CO TO MONITOR OR REPORT

**1. FAILURE BY PROJECT CO TO MONITOR OR REPORT**

- 1.1 Subject to this Part E, the Compliance Report produced by Project Co for any Contract Month shall be the source of the factual information regarding the performance of the Project Operations for the relevant Contract Month for the purposes of calculating the relevant Monthly Concession Payment and the number of Warning Notices awarded.
- 1.2 If there shall be any error or omission in the Compliance Report for any Contract Month, Project Co and HMQ shall agree the amendment to the Compliance Report or, failing agreement within 10 days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Compliance Report, except in the circumstances referred to in Section 1.5 of this Part E either party may refer the matter to the Dispute Resolution Procedure.
- 1.3 If Project Co fails to monitor or accurately report a Performance Failure then, without prejudice to the Performance Penalty to be made in respect of the relevant Performance Failure (if any), the failure to monitor or report the Performance Failure shall be deemed to be a new Regular Reporting Omission Failure, unless the circumstances set out in Section 1.5 of this Part E apply, in which case it shall be deemed to be a new Major Reporting Omission Failure. For clarity, application of a Performance Penalty related to a Regular Reporting Omission Failure and a Major Reporting Omission Failure shall be in addition to the Performance Penalty to be applied for the relevant Performance Failure which Project Co originally failed to monitor or accurately report.
- 1.4 In the event that any inspection or investigation by HMQ of records made available pursuant to the Project Agreement reveals any further matters of the type referred to in Sections 1.2 and 1.3 above, those matters shall be dealt with in accordance with Section 1.2 or 1.3 of this Part E, as appropriate, and HMQ shall, in addition, be entitled to apply Performance Penalties in respect of any Performance Failures in the manner prescribed in Part C of this Schedule 20. Any such Performance Penalties shall be applied to the Monthly Concession Payment payable in respect of the Contract Month in which the relevant matters were revealed by HMQ's investigations or, to the extent that HMQ is unable to apply any further Performance Penalties to the Monthly Concession Payment in respect of that Contract Month by virtue of Section 1.2 of Part C of this Schedule 20, may be carried forward and applied to Monthly Concession Payments due in respect of subsequent Contract Months.
- 1.5 For the purposes of Sections 1.2, 1.3, and 1.4 of this Part E the relevant circumstances are:
- (a) fraudulent action or inaction;
  - (b) deliberate misrepresentation; or
  - (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.
- 1.6 The provisions of this Part E shall be without prejudice to any rights of HMQ pursuant to Sections 31, 45 and 60 of the Project Agreement.

**2. AMOUNT OF REPORTING OMISSION FAILURES**

- 2.1 The amount of the Performance Penalty in respect of a Reporting Omission Failure shall be as follows:
- (a) in the case of a Regular Reporting Omission Failure, the Performance Failure shall be equal to [REDACTED]% of the original Performance Penalty in respect of the Performance Failure omitted, index-linked using the Escalation Factor as referred to in Section 4.1 of Part C in this Schedule 20; and
  - (b) in the case of a Major Reporting Omission Failure, the Performance Failure shall be equal to [REDACTED]% of the original Performance Penalty in respect of the Performance Failure omitted, index-linked using the Escalation Factor as referred to in Section 4.1 of Part C in this Schedule 20.

Part F:  
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Part G:  
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## APPENDIX A INDEXED DE SERVICE FEES AND VOLUMES

### 1. Knowledge Test: G Class (Regulation 340/94 s. 26. (1) 6.)

Contract Year	Volume (VOLs,n) [A]	Service Fee (SFs,o) in Base Date dollars [B]	Total Service Fee (SFs,o) in Base Date dollars [A x B]
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

### 2. Knowledge Test: M Class (Regulation 340/94 s. 26. (1) 6.)

Contract Year	Volume (VOLs,n) [A]	Service Fee (SFs,o) in Base Date dollars [B]	Total Service Fee (SFs,o) in Base Date dollars [A x B]
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**3. Knowledge Test: A, B, C, D, E, F and Z Class (Regulation 340/94 s. 26. (1) 6.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**4. G1 Road Test (Regulation 340/94 s. 26. (1) 4.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**5. M1 Road Test (Regulation 340/94 s. 26. (1) 4.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**6. G2 Road Test (Regulation 340/94 s. 26. (1) 3.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**7. M2 Road Test (Regulation 340/94 s. 26. (1) 3.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**8. Controlled Class A, B, C, D, E, F Road Test (Regulation 340/94 s. 26. (1) 1.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**9. Driving Instructor Knowledge Test (Regulation 473/07 s. 8 (1) 1.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**10. Driving Instructor Road Test (Regulation 473/07 s. 8 (1) 1.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

## APPENDIX B NON-INDEXED DE SERVICE FEES AND VOLUMES

### 1. Z Endorsement Practical Test (Regulation 340/94 s. 26. (1) 5.)

Contract Year	Volume (VOLs,n) [A]	Service Fee (SFs,o) in Base Date dollars [B]	Total Service Fee (SFs,o) in Base Date dollars [A x B]
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

### 2. Driver's License Fee G Class (Regulation 340/94 s. 26. (1) 12.)

Contract Year	Volume (VOLs,n) [A]	Service Fee (SFs,o) in Base Date dollars [B]	Total Service Fee (SFs,o) in Base Date dollars [A x B]
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**3. Driving Instructor Administration Fee (Regulation 473/07 s. 8 (1) 1.1)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**4. One Month Driving Instructor License Fee (Regulation 473/07 s. 8 (1) 2.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**5. 90 Day M Class License (Regulation 340/94 s. 26. (1) 12.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]

**6. New Entrant Education and Evaluation Program (“NEEEP”) Proficiency Test (Regulation 424/97 s. 1 (3) 7.)**

<b>Contract Year</b>	<b>Volume (VOLs,n) [A]</b>	<b>Service Fee (SFs,o) in Base Date dollars [B]</b>	<b>Total Service Fee (SFs,o) in Base Date dollars [A x B]</b>
1	[REDACTED]	\$(REDACTED)	[REDACTED]
2	[REDACTED]	\$(REDACTED)	[REDACTED]
3	[REDACTED]	\$(REDACTED)	[REDACTED]
4	[REDACTED]	\$(REDACTED)	[REDACTED]
5	[REDACTED]	\$(REDACTED)	[REDACTED]
6	[REDACTED]	\$(REDACTED)	[REDACTED]
7	[REDACTED]	\$(REDACTED)	[REDACTED]
8	[REDACTED]	\$(REDACTED)	[REDACTED]
9	[REDACTED]	\$(REDACTED)	[REDACTED]
10	[REDACTED]	\$(REDACTED)	[REDACTED]



**APPENDIX C**  
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## APPENDIX D PERFORMANCE PENALTY VALUES

**For greater clarity, the first and second column of the table below are a duplicate from Schedule 12 Part 3 with the addition of the corresponding Performance Penalty amounts to be used for the purposes of this Schedule 20 – Payment Mechanism.**

<b>Schedule 12, Part 2, Item Reference</b>	<b>Performance Penalty Application</b>	<b>Performance Penalty (\$CAD)</b>
1	(a) Applied each Contract Month for failure to deliver the Compliance Report in accordance with Schedule 14 Part 2 Item 2.1	[REDACTED]
	(b) Subsequently applied for each Business Day that Project Co fails to Rectify the Performance Failure in regards to Schedule 12 Part 2 Item 1	[REDACTED]
2	(a) Applied each Contract Month for each Performance Failure in regards to Schedule 12 Part 2 Item 2	[REDACTED]
	(b) Subsequently applied for each Business Day that Project Co fails to Rectify each Performance Failure in regards to Schedule 12 Part 2 Item 2	[REDACTED]
3	Applied each Contract Month for each Driver Examiner, Driver Examination Trainer, Master Trainer and CSA that fails to meet the requirements of Schedule 17	[REDACTED]
4	Applied each Contract Month for each Driver Transaction where Project Co does not comply with Schedule 12 Part 2 Item 4	[REDACTED]
5	Applied at each DE Premise each Contract Month where one or more errors are not Rectified within three (3) Business Days	[REDACTED]
6	(a) Applied each Contract Month for each failure to notify HMQ of Notifiable Incidents in accordance with Schedule 34, Part 3.	[REDACTED]
	(b) Applied each Contract Month for each failure to provide the Root Cause Analysis in accordance Schedule 34, Part 2	[REDACTED]
	(c) Subsequently applied each Contract Month for each failure to implement the proposed solution within the timeframe defined through the Root Cause Analysis	[REDACTED]

Schedule 12, Part 2, Item Reference	Performance Penalty Application	Performance Penalty (\$CAD)
7	(a) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (a)	[REDACT ED]
	(b) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (b)	[REDACT ED]
	(c) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (c)	[REDACT ED]
	(d) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (d)	[REDACT ED]
	(e) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (e)	[REDACT ED]
	(f) Applied each Contract Month at each Service Delivery Point for a Performance Failure against the standards of responsiveness defined in Schedule 12 Part 2 Item 7 (f)	[REDACT ED]
8	(a) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(a)	[REDACT ED]
	(b) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(b)	[REDACT ED]
	(c) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(c)	[REDACT ED]
	(d) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(d)	[REDACT ED]
	(e) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(e)	[REDACT ED]

<b>Schedule 12, Part 2, Item Reference</b>	<b>Performance Penalty Application</b>	<b>Performance Penalty (\$CAD)</b>
	(f) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(f)	[REDACT ED]
	(g) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(g).  In the event that the Performance Failure results in an application of a Performance Penalty under Schedule 12 Part 2 Item 7, a subsequent Performance Penalty under this provision will not apply.	[REDACT ED]
	(h) Applied each Contract Month for each Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(h).  In the event that the Performance Failure results in an application of a Performance Penalty under Schedule 12 Part 2 Item 7, a subsequent Performance Penalty under this provision will not apply.	[REDACT ED]
	(i) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(i)	[REDACT ED]
	(j) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(j)	[REDACT ED]
	(k) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(k)	[REDACT ED]
	(l) Applied each Contract Month for a Performance Failure against the service levels set out in Schedule 12 Part 2 Item 8(l)	[REDACT ED]
9	Applied each Contract Month for each DE Full Time Site and each DE Mandatory Replacement Premises that does not meet the requirements of Schedule 12 Part 2 Item 9	[REDACT ED]
10	Applied each Contract Month for each Performance Failure in regards to Schedule 12 Part 2 Item 10, with the exception of Performance Failures in regards to Schedule 18 Part 4 Section 4.1 Item (e) and Schedule 18 Part 4 Section 4.1 Item (f).  For greater clarity, if Project Co does not meet the requirements of Schedule 18 Part 4 Section 4.1 Item (e) and/or Schedule 18 Part 4 Section 4.1 Item (f), the Performance Penalty will be applied as per Schedule 12 Part 3 Item 7.	[REDACT ED]
11	Applied each Contract Month for each Performance Failure at each Service Delivery Point against the requirements set out in Schedule 12 Part 2 Item 11	[REDACT ED]

<b>Schedule 12, Part 2, Item Reference</b>	<b>Performance Penalty Application</b>	<b>Performance Penalty (\$CAD)</b>
12	Applied each Contract Month for each DE Premise for each Business Day where the 20 min wait time has been exceeded as set out in Schedule 12 Part 2 Item 12	[REDACT ED]
13	Applied each Contract Month for each Performance Failure in regards to Schedule 12 Part 2 Item 13  In the event that the Performance Failure results in an application of a Performance Penalty under another Key Performance Indicator, a subsequent Performance Penalty under this provision will not apply.	[REDACT ED]
14	Applied each Business Day for each DE Premises where the Hours of Operation have not been met.	[REDACT ED]

**APPENDIX E**  
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**APPENDIX F**  
**ANNUAL CONCESSION PAYMENT SCHEDULE**

<b>Contract Year</b>	<b>Annual Concession Payment (ACPn) in Nominal dollars</b>
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]

## SCHEDULE 22

## VARIATION PROCEDURE

## 1. VARIATIONS

## 1.1 Definitions

- (a) In addition to those terms defined in Section 1.1, the following terms shall have the following meanings:
- (i) **“Direct Cost”** has the meaning given in Appendix A of this Schedule 22.
  - (ii) **“Estimate”** has the meaning given in Section 1.4(a) of this Schedule 22.
  - (iii) **“HMQ Work”** has the meaning given in Section 1.7(a) of this Schedule 22.
  - (iv) **“Project Co Variation Notice”** has the meaning given in Section 2.1(a) of this Schedule 22.
  - (v) **“Variation”** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, together with any variation contemplated by Section 1.11 of this Schedule 22.
  - (vi) **“Variation Confirmation”** has the meaning given in Section 1.8(a)(ii) of this Schedule 22.
  - (vii) **“Variation Directive”** means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the HMQ Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (viii) **“Variation Enquiry”** has the meaning given in Section 1.3(a) of this Schedule 22.

## 1.2 General

- (a) HMQ has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that HMQ shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which HMQ is obligated to proceed with a Variation.
- (b) Without limiting the generality of Section 1.2(a), HMQ shall have the right to make Variation in respect of:
- (i) the Classes of Driver’s Licences, or the requirements for obtaining any Driver’s Licences;



- (ii) the content or duration of any driver examinations, including knowledge tests, vision tests and road tests;
  - (iii) the number or type of driver examinations that must be passed to obtain each Class of Driver's Licence, or the minimum requirements for passing such examinations;
  - (iv) any Key Performance Indicators; and
  - (v) the manner in which any of the DE Services are to be delivered.
- (c) HMQ shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (d) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

### 1.3 Variation Enquiry

- (a) If HMQ proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a "**Variation Enquiry**").
- (b) Subject to Section 1.11, a Variation Enquiry shall:
- (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether HMQ intends to pay for the Variation by way of lump sum payment or payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation); and
  - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications) that may be necessary to accommodate the Variation.

### 1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an "**Estimate**") prepared in accordance with and meeting the requirements of Section 1.6.

### 1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to HMQ's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe Applicable Law;
    - (B) cause to be revoked any of the existing Permits, Licences or Approvals required by Project Co to perform the Project Operations, and any such Permit, Licence or Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or
    - (C) require any new Permits, Licences or Approvals for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or HMQ, as applicable, be obtainable;
  - (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
  - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
  - (v) HMQ does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
  - (vi) the Variation would, if implemented, result in a change in the essential nature of the Project Operations;
  - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof); or
  - (viii) the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to HMQ a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

**1.6 Estimate Requirements**

- (a) Unless HMQ in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to HMQ's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
  - (ii) any impact on the scheduled delivery of the Project Operations including the performance of the DE Services;
  - (iii) any impact on the performance of the Project Operations and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
  - (iv) any amendments to this Project Agreement or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of HMQ to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
  - (v) any impact on the Direct Costs of Project Co and each Subcontractor, including:
    - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or HMQ); and
    - (B) subject to Section 1.11, any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
  - (vi) either:
    - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
    - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
  - (vii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;

- (viii) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Concession Payment, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (ix) any Permits, Licences and Approvals that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or HMQ, as applicable, must obtain or amend such Permits, Licences and Approvals for the Estimate to remain valid; and
- (x) the proposed methods of certification of any aspect of the Project Operations required by the Variation if not covered by the provisions of this Project Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to HMQ's satisfaction, acting reasonably, that:
  - (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
  - (iii) Project Co and the DE Service Provider shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or the DE Service Provider is calculated on any other margin of Project Co), and no other margins or mark-ups;
  - (iv) the margins for overheads and profits as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the DE Services Provider;
  - (v) all costs of providing Project Operations reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
    - (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided and that all such expenditures, including all applicable margins for overhead and profit anticipated to

be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and

- (vii) Project Co has mitigated or will mitigate the impact of the Variation on the performance of the Project Operations and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to HMQ, including using commercially reasonable efforts to mitigate such costs.
- (d) As soon as practicable, and in any event not more than 15 Business Days after HMQ receives an Estimate, Project Co and HMQ shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If HMQ would be required by Applicable Law or any policy applicable to HMQ to competitively tender any contract in relation to the proposed Variation, HMQ may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) HMQ may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify HMQ in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

## **1.7 HMQ's Right to Perform**

- (a) HMQ shall have the right to perform the subject matter of a proposed Variation (“**HMQ Work**”) itself, or through others contracting directly with HMQ, without compensation to Project Co, except as specifically stated herein.
- (b) HMQ shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by HMQ, or any third party, of HMQ Work, including, without limitation, any loss or expense related to any adverse impacts on the Project Operations.

## **1.8 Variation Confirmation**

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ shall either:

- (i) subject to Section 1.2(c) and Section 1.8(e), withdraw the Variation Enquiry by written notice to Project Co; or
  - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If HMQ does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.8(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
  - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
  - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
  - (iii) subject to Section 1.11, payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
  - (i) Project Co obtains such financing acceptable to HMQ in its sole discretion; or
  - (ii) HMQ in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
  - (i) the determination of whether or not to proceed with a Variation shall at all times be at HMQ’s sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 - Dispute Resolution Procedure; and
  - (ii) HMQ may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), HMQ shall not be obligated to Project Co in respect of a Variation until such time as HMQ in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by HMQ or HMQ has waived such requirement,

provided that HMQ may not withdraw a Variation Enquiry in circumstances where HMQ is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, HMQ shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

### **1.9 Financing**

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if HMQ requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and HMQ, provided that Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and HMQ within 60 days of the date that HMQ issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide HMQ with details of such financing, and HMQ shall, in its sole discretion, determine whether Project Co should proceed with such financing. If HMQ determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) HMQ may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ in its sole discretion waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If HMQ waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and HMQ shall pay for the Variation as provided for in Section 1.10(a)(ii).

**1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by HMQ, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall, subject to Section 1.11, be made as follows:
- (i) the Monthly Concession Payments shall be adjusted as set out in the Variation Confirmation; and
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
    - (A) HMQ shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by HMQ and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by HMQ; and
    - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.
- In the event HMQ and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by HMQ (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by HMQ in time to make payments to that third party in accordance with its contract with Project Co.
- (b) Subject to Section 1.11, HMQ shall make payment to Project Co within 20 Business Days of receipt by HMQ of invoices presented to HMQ in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
  - (c) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
  - (d) Upon request by Project Co, HMQ shall provide to Project Co copies of any consent or approval issued by HMQ in connection with a proposed Variation.



**1.11 Variations Arising from a DE Specific Change in Law**

- (a) Notwithstanding the provisions set forth above regarding Variations generally, the following provisions set forth in this Section 1.11 shall apply with respect to a Variation Enquiry in respect of a Variation as a result of a DE Specific Change in Law (a “**DE Specific Variation**”).
- (b) In this Section 1.11, the following terms shall have the following meanings:
- (i) “**DE Specific Variation**” has the meaning given in Section 1.11(a) of this Schedule 22.
  - (ii) “**Final Variation Compensation Payment**” means the Variation Compensation Payment for the applicable Period, as calculated and determined by the Independent DES Person pursuant to and accordance with this Section 1.11.
  - (iii) “**First Full Calendar Year**” means the first 365 day period following the date on which the DE Specific Change in Law was put into effect in respect of the Project Operations.
  - (iv) “**Free Cash Flow**” means the DE Service Revenue minus (a) cash direct operating expenses of the business of the DE Services and the IT Services, (b) change in net working capital, (c) normal capital expenditures of the business of the delivery of the DE Services and the IT Services, and (d) cash taxes of the business of the delivery of the DE Services and the IT Services payable by Project Co.
  - (v) “**Independent DES Person**” has the meaning given in Section 1.11(c) of this Schedule 22.
  - (vi) “**Period**” means, in respect of each DE Specific Change in Law, the First Full Calendar Year, or any subsequent 365 day period applicable to such DE Specific Change in Law to which a provisional or final payment in respect of a DE Specific Variation is applicable.
  - (vii) “**Provisional Variation Compensation Payment**” means a provisional estimate of the Variation Compensation Payment for the applicable Period, as calculated and determined by the Independent DES Person pursuant to and accordance with this Section 1.11.
  - (viii) “**Variation Compensation Payment**” means the amount of money (if any) payable by HMQ to Project Co or by Project Co to HMQ, as the case may be, in respect of the subject Period as a result of the implementation of a DE Specific Change in Law, such amount of money reflecting a change in the Free Cash Flow earned by Project Co during such Period, as a direct consequence of the implementation of such DE Specific Change in Law and any actions that Project Co should reasonably be expected to take to mitigate cash direct operating expenses and normal capital expenditures of the business of the delivery of the DE Services and the IT Services as a result of the implementation of such DE Specific Change in Law.
- (c) In the event that a DE Specific Change in Law occurs that would be reasonably likely to increase or decrease the Free Cash Flow that Project Co would reasonably be expected to incur as a result of such DE Specific Change in Law, then, in addition to the information required to be provided pursuant to Section 1.3, the Variation Enquiry in respect of such DE Specific Change in Law

shall specify the Provisional Variation Compensation Payment in respect of the First Full Calendar Year.

- (d) Each Provisional Variation Compensation Payment and Final Variation Compensation Payment shall be calculated and determined by an independent third party person selected and retained jointly by HMQ and Project Co (the “**Independent DES Person**”), and the costs and expenses of the Independent DES Person shall be borne equally as between HMQ and Project Co. In the event that HMQ and Project Co are unable to reach agreement as to the selection of the Independent DE Specific Person, the provisions of Section 58 of the Project Agreement shall be employed to select the Independent DES Person.
- (e) Project Co covenants and agrees to provide to HMQ and to the Independent DES Person all information, records, agreements and data relating, directly or indirectly, to the Project Operations, including without limitation, such information, records, documents, agreements and data contemplated in Section 2.2(b)(ii) of Part 2 of Schedule 24 – Transition Procedures, in the form, and incorporating the particulars, required by the Independent DES Person to enable the calculation of the Provisional Variation Compensation Payment and the Final Variation Compensation Payment.
- (f) Notwithstanding the provisions of Section 1.6(a)(v)(B) of this Schedule 22, Project Co acknowledges and agrees that for the purposes of an Estimate delivered in respect of a DE Specific Variation the determination of the impact on Project Co’s cash flow shall not take into account any assumptions that Project Co could have increased, or brought forward volumes of, applicants or tests by means of any communications or marketing campaign, or any assumptions that volumes or timing of applicants will be affected by new or increased prohibitions of behaviours, or sanctions for unlawful behaviours, or costs associated with the ownership and operation of motor vehicles.
- (g) For each DE Specific Change in Law implemented, at least sixty (60) days prior to the beginning of any Period following the First Full Calendar Year applicable to such DE Specific Change in Law, the Independent DES Person shall calculate and determine the Provisional Variation Compensation Payment in respect of that Period, and issue to HMQ and Project Co a written notice specifying such Provisional Variation Compensation Payment.
- (h) Within sixty (60) days following the First Full Calendar Year or any subsequent Period in respect of a DE Specific Change in Law, the Independent DES Person shall calculate and determine the Final Variation Compensation Payment (together with any applicable Payment Compensation Amount, as calculated in accordance with Section 1.11(n)) in respect of that Period, and issue to HMQ and Project Co a written notice specifying such Final Variation Compensation Payment and any applicable Payment Compensation Amount to be paid in respect thereof.
- (i) Any Provisional Variation Compensation Payment or Final Provision Variation Payment shall be due and payable within thirty (30) days following the issuance of written notice thereof by the Independent DES Person to HMQ and Project Co.
- (j) Each Provisional Variation Compensation Payment shall be binding on HMQ and Project Co, and shall not be subject to dispute resolution or adjudication pursuant to Section 58 of the Project

Agreement. If any Final Variation Compensation Payment is disputed, then, such dispute shall be dealt with in accordance with Section 58 of the Project Agreement.

- (k) With respect to the determination of the costs associated with the Project Operations for the purposes of calculating any Provisional Variation Compensation Payment or Final Variation Compensation Payment, the Independent DES Person shall base such determination solely on the amount of the increase (excluding, for the avoidance of doubt, the non-market portion of any cost arising from an agreement with a person who does not deal at arm's length with Project Co) or decrease in the costs of performing the Project Operations that Project Co would reasonably be expected to incur or benefit from as a result of the DE Specific Change in Law in question. In addition, for the purposes of determining any Provisional Variation Compensation Payment, of the Variation Compensation Amount must take into account:
- (i) in the case of the earned revenues:
    - (A) historical operating revenues;
    - (B) historical population migration trends out of and into the Province of Ontario; and
    - (C) historical population demographics within the Province of Ontario;
  - (ii) in the case of the variable expenses component of cash direct operating expenses:
    - (A) the historical CPI, historical cash direct operating expenses; and
    - (B) the effect of any non-market variable expenses arising from an agreement with a Person who does not deal at arm's length with Project Co; and
  - (iii) in the case of the fixed expenses component of cash direct operating expenses:
    - (A) the historical CPI; and
    - (B) the effect of any non-market fixed expenses arising from an agreement with a Person who does not deal at arm's length with Project Co.
- (l) The Parties agree that Final Variation Compensation Payments are not intended to compensate Project Co for hypothetical or speculative effects of a DE Specific Change in Law. All Final Variation Compensation Payments shall be calculated one Period at a time, in order that such payments can be related as closely as possible to actual time period to which they relate. In determining any Final Variation Compensation Payment, there shall be a presumption that the demand for Project Operations will not be affected by a change in any price paid by the public, or by a change in the documentation required to be submitted by applicants. This presumption can be rebutted only by actual records of the DE Services occurring after the implementation of the DE Specific Change in Law. Where incremental labour or time and materials are forecast to be required to implement a DE Specific Change in Law, payments in respect of these aspects of the Final Variation Compensation Payment shall be refunded to HMQ at the end of each Period unless Project Co has provided a certificate prepared by a senior corporate officer, in a form

satisfactory to HMQ, that all of the incremental time and materials were actually incurred by Project Co as a result of the DE Specific Change in Law during the Period.

- (m) Payment of a Final Variation Compensation Payment (together with any applicable Payment Compensation Amount, as calculated in accordance with Section 1.11(n)) by HMQ to Project Co or by Project Co to HMQ, as the case may be, shall constitute full and final satisfaction of all amounts that may be claimed by Project Co or HMQ, as applicable, for and in respect of the DE Specific Change in Law in question for the particular Period, and upon such payment, HMQ or Project Co, as the case may be, shall be released and forever discharged by the other Party from any and all liability in respect of the DE Specific Change in Law in question for the particular Period.
- (n) An amount to be paid in respect of a Final Variation Compensation Payment shall be offset by the Provisional Variation Compensation Payment where such amounts have been paid by HMQ or Project Co in respect of the DE Specific Variation for that Period. Any amount to be paid in respect of a Final Variation Compensation Payment shall include an amount equal to the Payment Compensation Amount calculated from the day following the date of the implementation of the DE Specific Change in Law in question until the due date of the Final Variation Compensation Payment.

#### **1.12 Reduction in Project Operations**

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Project Co, such savings shall result in an increase in the amount payable by Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and Project Co shall compensate HMQ by way of an increase in the Monthly Concession Payment.

#### **1.13 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by HMQ and Project Co or if there is a Dispute in relation thereto or if HMQ, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then HMQ may issue a Variation Directive and, following receipt of the Variation Directive:
  - (i) Project Co shall promptly proceed with the Variation;
  - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
  - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the HMQ Representative, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, HMQ shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii), except in the case of a DE Specific Variation which amounts

payable in respect thereof shall be determined in accordance with Section 1.11(b) of this Schedule 22, as the case may be.

## **2. PROJECT CO VARIATIONS**

### **2.1 General**

- (a) Project Co shall deliver to HMQ a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

### **2.2 Project Co Variation Notice**

- (a) A Project Co Variation Notice shall:
- (i) set out details of the proposed Variation in sufficient detail to enable HMQ to evaluate it in full;
  - (ii) specify Project Co’s reasons for proposing the Variation;
  - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to HMQ; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If HMQ, in its sole discretion, elects to consider the Variation proposed by Project Co, HMQ may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse HMQ for all costs and expenses reasonably incurred by HMQ in connection with HMQ’s consideration of any Variation proposed by Project Co pursuant to Section 2 of this Schedule 22, including, without limitation, legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

**APPENDIX A****CALCULATION OF DIRECT COSTS****1. DIRECT COSTS**

- 1.1 Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:
- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Project Operations;
  - (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel in whatever capacity employed, or personnel engaged in expediting the production or transportation of materials or equipment;
  - (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
  - (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
  - (v) travel and subsistence expenses of Project Co’s or each Subcontractor’s officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
  - (vi) the cost of materials, products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
  - (vii) the rental costs of all machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
  - (viii) deposits lost;
  - (ix) the amount of all Subcontracts with Subcontractors;
  - (x) the amount paid for any design services;
  - (xi) the cost of third party quality assurance required by HMQ, such as independent inspection and testing services;

- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of HMQ to pay HST payable by it under this Project Agreement), but excluding:
  - (A) HST;
  - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the Income Tax Act (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
  - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to HMQ;
- (xviii) the cost of any additional insurance or performance security required or approved by HMQ;
- (xix) the cost of obtaining all Project Co Permits, Licences and Approvals; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;

- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the GTA; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.



## APPENDIX B

## APPLICABLE MARGINS

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under \$[REDACTED]</i>	<i>For projects between \$[REDACTED] and \$[REDACTED]</i>	<i>For projects over \$[REDACTED]0</i>
Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
DE Service Provider (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
DE Service Provider (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

## SCHEDULE 23

## COMPENSATION ON TERMINATION

## 1. DEFINITIONS

## 1.1 Definitions

The following terms shall have the following meanings:

- (a) **“Adjusted Estimated Fair Value”** means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination DE Service Revenue is a negative number, the aggregate amount by which all such negative Post Termination DE Service Revenue is negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by HMQ pursuant to Section 3.3(f) of this Schedule 23);
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value;
    - (A) the Post Termination DE Service Revenue actually collected and retained by Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that HMQ is entitled to set off or deduct;
  - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated (excluding the amount equal to the aggregate amount of Unearned Revenue as at such date). For greater certainty, all Unearned Revenue is the property of HMQ as provided in Schedule 35 – Fee Collection, and any such credit balances related to DE Services not yet rendered or performed in full by Project Co on such date shall not be added to the Estimated Fair Value); and
    - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A) of this Schedule 23,

to the extent that:

- (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) of this Schedule 23 have not been directly taken into account in calculating the Estimated Fair Value; and
  - (D) HMQ has received such amounts in accordance with this Project Agreement.
- (b) **“Adjusted Highest Qualifying Tender Price”** means the price offered by the Qualifying Tenderer (if any) with the highest tender price (with such price being reduced by the amount equal to the Qualifying Tenderer’s calculation of the present value of the Monthly Concession Payments, as adjusted for inflation pursuant to Section 3.4(c)(i), from the Termination Date to the Expiry Date (with such amount being disclosed by the Qualifying Tenderer)), adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination DE Service Revenue is a negative number, the aggregate amount by which all such negative Post Termination DE Service Revenue is negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by HMQ pursuant to Section 3.3(f) of this Schedule 23);
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
    - (A) the Post Termination DE Service Revenue actually collected and retained by Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that HMQ is entitled to set off or deduct.
  - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received (excluding the amount equal to the aggregate amount of Unearned Revenue as at such date. For greater certainty, all Unearned Revenue is the property of HMQ as provided in Schedule 35 – Fee Collection, and any such credit balances related to DE Services not yet rendered or performed in full by Project Co on such date shall not be added to the Estimated Fair Value); and
    - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A) of this Schedule 23,  
  
to the extent that:
    - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) of this Schedule 23 have not been directly taken into account in that Qualifying Tender; and

- (D) HMQ has received such amounts in accordance with this Project Agreement.

For clarity, for the purpose of the adjustments to be made for the purposes of determining the Adjusted Highest Qualifying Tender Price, there shall be no duplication or double-counting of the Monthly Concession Payments payable from the Termination Date to the Expiry Date.

- (c) **“Compensation Date”** means either:

- (i) if Section 3.3 of this Schedule 23 applies, the earlier of:

(A) the date that the New Agreement is entered into; and

(B) the date on which HMQ pays the Adjusted Highest Qualifying Tender Price to Project Co; or

- (ii) if Section 3.4 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.

- (d) **“DE Service Revenue”** means, in the aggregate, the fees and amounts payable and/or paid by the public for the DE Services that HMQ has authorized Project Co to collect and retain as set forth in Section 1.1 of Schedule 35 – Fee Collection. For certainty, DE Service Revenue does not include any part of the HMQ Licensing Fee or the MVAC Fee.

- (e) **“Discount Rate”** means a rate equal to  $((A + B) / C) + D$ , where:

A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.

B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.

C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.

D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.

- (f) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:

- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
  - (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (g) **"Estimated Fair Value"** means the amount determined in accordance with Section 3.4 of this Schedule 23.
- (h) **"HMQ Default Termination Sum"** has the meaning given in Section 2.1(b) of this Schedule 23.
- (i) **"Invoice Date"** means the date that is the later of:
- (i) the date on which HMQ receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which HMQ receives the supporting evidence required pursuant to Section 8.1(a) of this Schedule 23.
- (j) **"Junior Debt Amount"** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all Junior Debt Interest at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co's excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- (k) **"Junior Debt Interest"** means at any time, all interest payable and accruing on the Junior Debt at that time.
- (l) **"Junior Debt Makewhole"** means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any "make whole" payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- (m) **"Lending Agreements"** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations, including, for greater certainty, the Security Documents, any Hedging Agreement(s) and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations.

- (n) **“Liquid Market”** means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of services similar to the Project Operations (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4 of this Schedule 23.
- (o) **“Market Value Performance Penalty Amount”** means for any Payment Period or part of a Payment Period, an amount equal to the aggregate of the Performance Penalties for Performance Failures that were claimed by HMQ under the Payment Mechanism in the Payment Period immediately preceding the Termination Date.
- (p) **“New Agreement”** means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
- (i) **[Intentionally Deleted];**
  - (ii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
  - (iii) any other amendments which do not adversely affect Project Co.
- (q) **“New Project Co”** means the person who has entered or who will enter into the New Agreement with HMQ.
- (r) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (s) **“Payment Period”** means each Contract Month.
- (t) **“Post Termination DE Service Revenue”** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the DE Service Revenue expected to be collected and retained by Project Co during such period had this Project Agreement not been terminated, as determined by HMQ, acting reasonably, plus an amount equal to the aggregate (without double counting) of:
- (i) the Market Value Performance Penalty Amount for that Payment Period;
  - (ii) the Rectification Costs incurred by HMQ in that Payment Period; and
  - (iii) all Unearned Revenue during such period, as determined by HMQ, acting reasonably.
- (u) **“Prohibited Acts Termination Sum”** has the meaning given to it in Section 5.1(b) of this Schedule 23.

- (v) “**Qualification Criteria**” means the criteria that HMQ requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
- (i) that the tenders confirm acceptance of the New Agreement terms;
  - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
  - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
  - (iv) that the tenderer is experienced in performing the Project Operations or similar services;
  - (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
  - (vi) any other tender criteria established by HMQ, acting reasonably.
- (w) “**Qualifying Tender**” means a tender that meets all of the Qualification Criteria.
- (x) “**Qualifying Tenderer**” means a tenderer who submits a Qualifying Tender.
- (y) “**Rectification Costs**” means, for the purposes of any Termination Date, an amount equal to the reasonable and proper costs incurred by HMQ in a particular Payment Period or part of a Payment Period in ensuring that the Project Operations carried out.
- (z) “**Senior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.
- (aa) “**Senior Debt Makewhole**” means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “make whole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.

- (bb) “**Subcontractor Losses**” means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors:
- (i) the amount reasonably and properly payable by Project Co to the DE Services Provider under the terms of the DE Services Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
  - (ii) the amount reasonably and properly payable by Project Co to the IT Services Provider under the terms of the IT Services Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount,
- provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
  - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
  - (v) (agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (cc) “**Tender Costs**” means the reasonable and proper costs of HMQ incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (dd) “**Tender Process**” means the process by which HMQ requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3 of this Schedule 23.
- (ee) “**Tender Process Monitor**” has the meaning given in Section 3.3(g) of this Schedule 23.
- (ff) “**Unearned Revenue**” means DE Service Revenue in respect of which Project Co has not rendered or performed in full the DE Services giving rise to such DE Service Revenue.

## 2. COMPENSATION ON TERMINATION FOR HMQ DEFAULT OR CONVENIENCE

### 2.1 Compensation



- (a) If Project Co terminates this Project Agreement pursuant to Section 46 of this Project Agreement or HMQ terminates this Project Agreement pursuant to Section 47.3 of this Project Agreement, HMQ shall pay to Project Co the HMQ Default Termination Sum.
- (b) The “HMQ Default Termination Sum” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
  - (iii) **[Intentionally Deleted]**
  - (iv) the Employee Termination Payments and the Subcontractor Losses;
  - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
  - (vi) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Base Case Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date (excluding the amount equal to the aggregate amount of Unearned Revenue as at the Termination Date) and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims. For greater certainty, all Unearned Revenue is the

property of HMQ and shall be remitted by Project Co to HMQ as provided in Schedule 35 – Fee Collection;

- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which HMQ is entitled to set-off pursuant to Section 4.10 of this Project Agreement,

provided that the HMQ Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the HMQ Default Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the HMQ Default Termination Sum in accordance with Section 8 of this Schedule 23.

### **3. COMPENSATION FOR PROJECT CO DEFAULT**

#### **3.1 Compensation**

- (a) Save and except where Sections 5 or 6 of this Schedule 23 apply, if HMQ terminates this Project Agreement pursuant to Section 45 of this Project Agreement, HMQ shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable, provided however that any payment made by HMQ to Project Co pursuant to this Section 3.1 shall never be greater than the aggregate of:
  - (i) Senior Debt Amount and the Senior Debt Makewhole;

- (ii) Junior Debt Amount less the aggregate of all Junior Debt paid to the Junior Lenders on or before the Termination Date; and
- (iii) an amount equal to the Equity Capital as at Financial Close, less the sum of (i) all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date; and (ii) the Tender Costs, provided that where such amount is negative, it shall be deemed instead to be zero.

### 3.2 Retendering Election

- (a) HMQ shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule 23 and the provisions thereof shall apply if:
  - (i) HMQ notifies Project Co on or before the date falling 30 days after the Termination Date; and
  - (ii) there is a Liquid Market,but, otherwise, HMQ shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule 23 and the provisions thereof shall apply.
- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4 of this Schedule 23, Project Co shall continue to perform the Project Operations, including its obligations as set forth in Schedule 20 – Payment Mechanism.

### 3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) HMQ shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) of this Schedule 23 and use commercially reasonable efforts to complete the Tender Process as soon as practicable.
- (c) HMQ shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- (d) Project Co authorizes the release of any information by HMQ under the Tender Process which would otherwise be prevented under Section 52 of this Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to perform the Project Operations, including its obligations as set forth in Schedule 20 – Payment Mechanism, and shall continue to collect and retain the Post Termination DE Service Revenue.

- (f) If any Post Termination DE Service Revenue is negative, then the amount by which the Post Termination DE Service Revenue is negative shall be carried forward and may be set off against any future positive Post Termination De Service Revenue.
- (g) Project Co may, at its own cost, appoint a person (the “**Tender Process Monitor**”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on HMQ’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with HMQ in a form acceptable to HMQ and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to HMQ as to compliance with the Tender Process. HMQ shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that HMQ has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, HMQ shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) HMQ shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 7 of this Schedule 23.
- (k) HMQ may elect, by notice to Project Co at any time prior to HMQ ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4 of this Schedule 23. In addition, HMQ shall follow such no retendering procedure if:
  - (i) only one Qualifying Tender is received; or
  - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to HMQ at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If HMQ is in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If HMQ provides a written response within 10 Business Days of receipt of such notice stating that it is in disagreement with that notice or if no written response is provided by HMQ within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

### 3.4 No Retendering Procedure

- (a) Subject to Section 3.4(b) of this Schedule 23, if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination DE Service Revenue.
- (b) If HMQ elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3 of this Schedule 23, then Project Co shall continue to perform the Project Operations, including its obligations as set forth in Schedule 20 – Payment Mechanism, and shall be entitled to collect and retain the Post Termination DE Service Revenue.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
- (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in this Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
- (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):
- $$(A - B - C) - D - E$$
- Where:
- A = the present value of the DE Service Revenue reasonably forecasted to be generated from the Termination Date to the Expiry Date, such forecast to be made by HMQ, acting reasonably, discounted at the Discount Rate
- B = a contingency amount based on a reasonable risk assessment of any cost overruns with respect to any Variation that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii) of this Schedule 23) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate
- C = the present value of the costs of obtaining or performing the Project Operations reasonably forecast to be incurred by HMQ from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate
- D = any rectification costs (including Rectification Costs) reasonably required to deliver the Project Operations to the standard required, including, if applicable, any costs reasonably forecast to be incurred by HMQ for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D),

(A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements; and

(B) **[Intentionally Deleted]**,

discounted at the Discount Rate.

E = the present value of the Monthly Concession Payments, as adjusted for inflation pursuant to Section 3.4(c)(i), from the Termination Date to the Expiry Date, discounted at the Discount Rate.

For clarity, for the purpose of determining the Estimated Fair Value, there shall be no duplication or double-counting of the Monthly Concession Payments payable from the Termination Date to the Expiry Date.

- (iii) The amount of  $(A - B - C) - E$  as defined in Section 3.4(c)(ii) of this Schedule 23 shall be no greater than the Non-Default Termination Sum.
- (iv) All costs referred to in Section 3.4(c)(ii) of this Schedule 23 are to be forecast at a level that will deliver the Project Operations to the standards required by this Project Agreement (without Performance Penalties).
- (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under this Project Agreement.
- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.
- (e) HMQ shall pay the Adjusted Estimated Fair Value in accordance with Section 7 of this Schedule 23.

#### **4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY HMQ FOR RELIEF EVENT**

##### **4.1 Consequences**

- (a) If HMQ terminates this Project Agreement pursuant to Section 47.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 47.2 of this Project Agreement, HMQ shall pay to Project Co the Non-Default Termination Sum.
- (b) The “Non-Default Termination Sum” shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount;

- (iii) **[Intentionally Deleted];**
- (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit); and
- (v) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date (excluding the amount equal to the aggregate amount of Unearned Revenue as at the Termination Date) and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims. For greater certainty, all Unearned Revenue is the property of HMQ and shall be remitted by Project Co to HMQ as provided in Schedule 35 – Fee Collection and Reporting; and
- (vii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements

had been entered into in the ordinary course of business and on commercial arm's length terms; and

- (viii) amounts which HMQ is entitled to set off pursuant to Section 4.10 of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the Non-Default Termination Sum in accordance with Section 8 of this Schedule 23.

## **5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS**

### **5.1 Consequences**

- (a) If HMQ terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 60 of this Project Agreement, HMQ shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "Prohibited Acts Termination Sum" shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole; and
  - (ii) **[Intentionally Deleted]**
  - (iii) the following amounts calculated in respect of the DE Service Provider, if the DE Service Provider is not responsible for a Prohibited Act, and the IT Service Provider, if the IT Service Provider is not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
    - (A) the Employee Termination Payments; and
    - (B) as applicable, the DE Service Provider's and IT Service Provider's out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the DE Service Provider and IT Service Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date (excluding the amount equal to the aggregate amount of Unearned



Revenue as at the Termination Date) and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims. For greater certainty, all Unearned Revenue is the property of HMQ and shall be remitted by Project Co to HMQ as provided in Schedule 35 – Fee Collection and Reporting;

- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vi) amounts which HMQ is entitled to set off pursuant to Section 4.10 of this Project Agreement.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the Prohibited Acts Termination Sum in accordance with Section 8 of this Schedule 23.

**6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING****6.1 Consequences**

- (a) If HMQ terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 - Refinancing or the Lender assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, HMQ shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Sections 5.1(b)(i), (ii), (iii), (iv) and (v) of this Schedule 23, less amounts which HMQ is entitled to set off pursuant to Section 4.10(a)(i) of this Project Agreement.
- (b) HMQ shall pay such termination sum in accordance with Section 8 of this Schedule 23.

**7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT****7.1 Consequences**

- (a) If:
- (i) Project Co terminates this Project Agreement pursuant to Section 47.1 of the Project Agreement; and
  - (ii) during the 180 day time period giving rise to such right in favour of Project Co to terminate this Project Agreement pursuant to Section 47.1(a), the Price-Weighted Volume Percentage Decline is equal to or greater than [REDACTED] per cent ([REDACTED] %);

then HMQ shall pay to Project Co a termination sum equivalent to the greater of (i) an amount calculated and payable in accordance with, the Prohibited Acts Termination Sum; and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23. For certainty, except as set forth in this Section 7.1(a) of this Schedule 23, in no other event, circumstance or situation shall HMQ pay to Project Co any compensation on termination pursuant to an election made by Project Co to terminate this Project Agreement pursuant to Section 47.1 of this Project Agreement.

- (b) For the purposes of Section 7 of this Schedule 23, the term "**Price-Weighted Volume Percentage Decline**" means the number calculated in accordance with the following formula expressed as a percentage relative to 1.0:

$$\frac{\sum((P_{\text{Current}} \times V_{\text{Average}}) - (P_{\text{Current}} \times V_{\text{Realized}}))}{\sum(P_{\text{Current}} \times V_{\text{Average}})}$$

Where:

$\Sigma$  is the aggregate of all DE Services.

$P_{Current}$  is the DE Service Fee for the corresponding DE Service effective as at the beginning of the subject Relief Event.

$V_{Average}$  is the simple average actual historical volume for the corresponding DE Service for the same one-hundred and eighty (180) day period giving rise to such right in favour of Project Co to terminate this Project Agreement pursuant to Section 47.1(a) (i.e. the same season) for the three (3) immediate preceding Contract Years during which an event of Force Majeure did not occur or which were not materially affected by an event of Force Majeure that occurred in the immediately preceding Contract Year; or if such period of time cannot be established due to events of Force Majeure occurring or if such period of time is less than three (3) Contract Years,  $V_{Average}$  shall be the simple average actual historical volume for the corresponding DE Service the same one-hundred and eighty (180) day period giving rise to such right in favour of Project Co to terminate this Project Agreement pursuant to Section 47.1(a) (i.e. the same season) for all previous Contract Years.

$V_{Realized}$  is the realized volume for the corresponding DE Service during the one-hundred and eighty (180) day period giving rise to such right in favour of Project Co to terminate this Project Agreement pursuant to Section 47.1(a).

- (c) HMQ shall pay the Non-Default Termination Sum in accordance with Section 8.1 or 8.3 of this Schedule 23, as applicable.

## **8. GENERAL**

### **8.1 Payment and Interest Following Non-Project Co Default Termination**

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 5, 6 or 7 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to HMQ an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) HMQ shall pay to Project Co:
  - (i) the relevant termination sum within 60 days after the Invoice Date; and
  - (ii) HMQ shall indemnify Project Co as provided in Section 56.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
    - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and

- (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4, 5, 6 or 7 of this Schedule 23, if the applicable termination sum is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify HMQ as provided in Section 56.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

## **8.2 Payment and Interest Following Project Co Default - Retendering Procedure**

- (a) Following the retendering procedure set out in Section 3.3 of this Schedule 23, HMQ shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
  - (i) the date on which HMQ enters into the New Agreement with the New Project Co; and
  - (ii) if Project Co has, pursuant to Section 3.3(i) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 - Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that HMQ shall pay the undisputed amount on the date referred to in Section 8.2(a)(i) of this Schedule 23.

and HMQ shall indemnify Project Co as provided in Section 56.2(c) of this Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which HMQ enters into the New Agreement with the New Project Co;

- (i) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
  - (ii) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay HMQ the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify HMQ as provided in Section 56.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

**8.3 Payment and Interest Following Project Co Default - No Retendering Procedure**

- (a) If HMQ follows the no retendering procedure set out in Section 3.4 of this Schedule 23, HMQ shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) of this Schedule 23.
- (b) If the Adjusted Estimated Fair Value is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay HMQ the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify HMQ as provided in Section 56.1(e) in respect of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

**8.4 Costs**

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

**8.5 Undisputed Amounts**

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 of this Schedule 23 and the disputed amount shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.

**8.6 Outstanding Debt Amounts**

- (a) HMQ shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge HMQ's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**SCHEDULE 24****TRANSITION PROCEDURES****PART 1 – FRONT-END TRANSITION PROCEDURE****1.1 Moving**

- (a) Project Co shall be responsible, at its cost, for moving (where required) all of the Equipment and the Hardware (as those terms are defined in the Lease and Licensing Agreement) to the Service Delivery Points so that such Equipment and Hardware is available to Project Co to deliver the DE Services at 6:00 a.m. on the Commencement Date.

**1.2 Transfer of Telephone Numbers**

- (a) On or prior to the Commencement Date, HMQ shall transfer, or shall cause to be transferred, to and vest in Project Co all interest in and right to use all telephone numbers (including toll-free numbers) and all listings (to the extent that the telecommunications carrier will permit same in respect of telephone numbers and listings) and all e-mail addresses, applicable to the Service Delivery Points set out in Part I of Schedule 7 – DE Premises or Part II of Schedule 7 – DE Premises, or used exclusively in the delivery of the Project Operations. Such numbers, listings and e-mail addresses shall not include numbers, listings or e-mail addresses of a personal nature to HMQ.
- (b) Upon any such transfer to and vesting in Project Co, Project Co shall have the exclusive right to use such telephone numbers, listings and e-mail addresses solely for the delivery of the Project Operations.

**PART 2– BACK END TRANSITION PROCEDURES****2.1 Obligations of Project Co on Termination or Expiry**

- (a) In addition to, and without limiting, the other obligations of Project Co pursuant to this Schedule 24 – Transition Procedures or the Project Agreement, on the service of a notice of termination, or termination on the Expiry Date pursuant to Section 47.4 of the Project Agreement Project Co shall:
  - (i) deliver to HMQ one complete set of all Project Data and Intellectual Property relating to the Project Operations in the form, and incorporating the particulars, required by HMQ;
  - (ii) hand over to, and there shall vest in, HMQ, free from all liens and encumbrances, all other assets and rights capable of being transferred that are necessary for the performance of the Project Operations and all facilities and equipment including, notwithstanding that termination may occur prior to the Expiry Date, the verification and transfer of inventory in a form and manner as may be required by HMQ, in its sole discretion, and to the extent that any such assets or rights are not capable of being transferred by Project Co to HMQ, Project Co shall enter into

agreements or make other arrangements in order to permit the use of the assets or rights by HMQ in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if the Project Agreement had not been terminated;

- (iii) if HMQ so elects, ensure that any of the Subcontracts as elected by HMQ (including DE Services Contract), and any other instrument entered into between any Subcontractor and Project Co or the DE Services Provider for securing the performance by a Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to HMQ or its nominee at HMQ's sole discretion, provided that any such novation or assignment of a Subcontract with the DE Services Provider shall be made to HMQ pursuant to, and subject to, the terms of the DE Service Provider's Direct Agreement;
- (iv) deliver to HMQ (to the extent such items have not already been delivered to HMQ) one complete set of the most recent operation and training manuals for the DE Services;
- (v) deliver to HMQ all information, reports, documents, records and the like referred to in Sections 14 and 37, including as referred to in Schedule 14 – Reporting Obligations and Schedule 26 – Record Provisions, respectively, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to HMQ);
- (vi) ensure that, in the case of the termination of the Project Agreement on the Expiry Date in accordance with Section 47.4 of the Project Agreement, the Project Operations (including all Service Delivery Points) shall be in the condition required in accordance with this Part II of Schedule 24 – Transition Procedures;
- (vii) cooperate fully with HMQ and any successors providing services in the nature of any of the Project Operations in order to achieve a smooth transfer of the manner in which the Project Operations is performed and to avoid or mitigate any inconvenience users of the DE Services;
- (viii) except as otherwise provided in the Project Agreement or this Part II of Schedule 24, by no later than 6:00 a.m. on the Termination Date remove from all Service Delivery Points, as applicable, all property belonging to Project Co or any Project Co Party that is not acquired by HMQ pursuant to the provisions of this Part II of Schedule 24 or otherwise, and, if Project Co has not done so within the time period required herein, HMQ may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
- (ix) forthwith deliver to the HMQ Representative, or its nominee, at HMQ's sole discretion:
  - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Service Delivery Points, as applicable; and

- (B) to the extent transferable and without prejudice to HMQ's rights pursuant to Section 51 of the Project Agreement, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Project Operations; and
- (x) as soon as practicable vacate the Service delivery Points, as applicable, and, without limiting Project Co's obligations under this Part II of Schedule 24, leave the Service Delivery Points, as applicable, in a safe, clean and orderly condition.

## 2.2

### Assistance by Project Co.

- (a) Without limiting the obligations of Project Co set forth in Section 2.1(a) and without limiting the rights of HMQ as set out in Section 48.7 of the Project Agreement, during the period of 24 months before: (i) the Termination Date, as notified to Project Co by HMQ, or (ii) the Expiry Date, as applicable (the "**Termination Transition Period**") and from and after the Termination Date or the Expiry Date, as applicable, and continuing for such period (not to exceed 12 months) after that date as HMQ specifies (the "**Post-termination Period**"), Project Co shall cooperate with HMQ, to such extent as required by HMQ, to complete the timely, safe, orderly, effective and efficient transition of the delivery of the Project Operations from Project Co to HMQ or another Person that has been authorized to deliver the Project Operations (the "**New Project Co**") as set out in this Section 2.2.
- (b) Without limiting the generality of Subsection 2.2(a) and without limitation to any other rights of HMQ in the Project Agreement including Section 48.7 of the Project Agreement:
  - (i) Project Co shall comply with all requests of HMQ to provide information and data in the form, and incorporating the particulars, required by HMQ, relating to Project Co's administration and costs of performing the Project Operations. Such information shall include information relating to the anticipated administration and cost of a transfer of the Project Operations to a New Project Co or HMQ, as the case may be. HMQ shall have the right to disclose to any prospective New Project Co any or all of the information provided under this Section 2.2(b), without disclosing to Project Co the identity of any such prospective New Project Co; and
  - (ii) during the Termination Transition Period and/or the Post-termination Period, Project Co shall comply with all requests of HMQ to provide all information, records, documents, agreements and data relating, directly or indirectly, to the Project Operations including, without limitation, such information, records, documents, agreements and data set out below in the form, and incorporating the particulars, required by HMQ, relating to Project Co's administration and cost of performing the Project Operations:
    - (A) detailed revenue information as requested by HMQ, along with a record of the current amounts and charges, as reflected in the books and records of Project Co, that have or will thereafter become due by Project Co to



HMQ, or by HMQ to Project Co, as the case may be, pursuant to the Project Agreement and that are then unpaid;

- (B) listing of all current and historical costs and expenses relating to the performance of the Project Operations with a breakdown of such costs and expenses listed in respect of each Service Delivery Point to which each such cost and expense relates;
- (C) volume information with respect to the Project Operations delivered by Project Co, including road tests, knowledge tests, road test inventory and Telephone Call Centre, where possible, on a class by class and location by location basis for all Service Delivery Point and Travel Points;
- (D) human resources catalogues and position descriptions;
- (E) training and instructor manuals for all employee positions;
- (F) information and data related to any IT Systems introduced to replace or work in concert with the HMQ Systems that is within the scope of Sections 51.2, 51.3, 51.4 of the Project Agreement and/or Schedule 16 – IT Output Specifications, as applicable;
- (G) information related to contingent liabilities and threatened or pending litigation;
- (H) floor plan, site plan and photographs in respect of all Service Delivery Points, as applicable;
- (I) Project Co's policy and operations manuals relating to the performance of the Project Operations;
- (J) codified operational procedures;
- (K) Project Co's forms relating to the performance of the Project Operations;
- (L) true, accurate and complete copies of all Third Party Contracts and all other agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Project Co and any persons relating to the Project Operations;
- (M) all information relating each employee performing the Project Operations including description of position held, wages, salary and benefits information, hours worked and the terms of any written or oral contracts of employment; and
- (N) details of all Performance Failures and related Performance Penalties applied from the Commencement Date to the date such request is made of Project Co;

- (O) all technical information relating to the Project Operations and all Project Co IT Systems as may be identified by HMQ including, without limitation:
  - (I) data network design, configuration and architecture documents;
  - (II) data centre design, configuration, architecture and infrastructure documents;
  - (III) IT data centre equipment (e.g., servers, load balancers, etc.) design, configuration, architecture and infrastructure documents;
  - (IV) application design, configuration and architecture documents;
  - (V) source code repository with all relevant source code (e.g., applications, services, drivers, configuration scripts, scripts, etc.) and configuration management scripts and documentation;
  - (VI) telephony design, configuration, architecture and infrastructure documents;
  - (VII) desktop workstation design, configuration, architecture, infrastructure documents and software images;
  - (VIII) IT peripherals design, configuration, architecture and infrastructure documents;
  - (IX) databases;
  - (X) applications;
  - (XI) database design, configuration, architecture and infrastructure documents;
  - (XII) volume metrics; and
  - (XIII) business rules.
- (c) During the Termination Transition Period, as and when requested by HMQ, Project Co shall cooperate with and provide assistance and facilities to HMQ and the New Project Co and/or any prospective New Project Co, save to the extent that the provision of such cooperation, assistance or facilities adversely interferes with Project Co's performance of the Project Operations. If Project Co believes that the provision of such cooperation, assistance or facilities would have a material adverse effect on the Project Operations, or would result in a material increase in costs to Project Co, Project Co shall provide notice in writing to HMQ immediately. The parameters for such cooperation, assistance and facilities shall include:

- (i) communication;
- (ii) provision to HMQ of all materials and information as may be reasonably necessary for HMQ to prepare and develop for use by New Project Co and/or any prospective New Project Co of a data room of the nature that would generally be made available to parties participating in a commercial transaction;
- (iii) access to the areas of the Service Delivery Points from which the Project Operations are being performed and Project Co Premises, including without limitation, any premises where any Project Data is stored by Project Co, provided that:
  - (A) all such access shall be during normal working hours for the purposes of general inspection and analysis of the Project Operations; and
  - (B) those persons provided with such access shall comply with the provisions of any reasonable security requirements and/or protocols relating to the Service Delivery Points and the Project Co Premises, provided that such requirements and/or protocols are not in any way in conflict, or inconsistent, with the rights of inspection to be granted to HMQ in the Project Agreement or the rights of HMQ, New Project Co or any prospective New Project Co to obtain all necessary information as may be reasonably required in the context of a competition or procurement for the provision of services similar to the Project Operations;
- (iv) access to Project Co Parties.
- (d) During the period that is not more than 180 days prior to the expiry of the Termination Transition Period, Project Co shall facilitate for HMQ, New Project Co and/or any prospective New Project Co, if requested, meetings with the non-unionized employees of Project Co who are engaged in the performance of the Project Operations (including, without limitation and if applicable, all Driver Examiners and Inside Examiners as identified by HMQ or New Project Co) prior to such persons being released from employment by Project Co. Project Co shall in no way restrict HMQ or New Project Co, as the case may be, from offering employment to any non-unionized employees of Project Co who are engaged in the performance of the Project Operations. In the event any of the non-unionized employees of Project Co who are offered positions to work with HMQ or New Project Co, as the case may be, accept such offers of employment, Project Co shall complete all documentation and take all steps as may be necessary in the opinion of HMQ, acting reasonably, to properly terminate such employees of Project Co including by fulfilling all severance and/or termination payment obligations required to be made and Project Co shall take all such other steps as HMQ or New Project Co may reasonably require in connection with the termination of those non-unionized employees who are accepting offers of employment from HMQ or New Project Co.
- (e) During the Termination Transition Period, effective upon prior notice from HMQ, Project Co shall facilitate for HMQ, New Project Co and/or any prospective New Project Co meetings with any union or bargaining agent representing any one or more groups of employees performing the Project Operations and, if such notice has been given by

HMQ, Project Co shall in no way restrict HMQ, New Project Co and/or any prospective New Project Co, as the case may be, from participating in such discussions with any applicable union or bargaining agent. In addition, to the extent that during the Termination Transition Period Project Co and any union or bargaining agent representing any one or more groups of employees performing the Project Operations are participating in negotiations towards a new collective agreement or an agreement governing the manner in which the employees shall perform duties and services in connection with the performance of the Project Operations, effective upon prior notice from New Project Co, Project Co shall include as part of Project Co's bargaining team that is participating in such negotiations any representative of New Project Co, subject at all times to New Project Co having the right to participate in such negotiations under Applicable Law.

- (f) Project Co shall use its best efforts to ensure that any Subcontractor engaged or otherwise used by Project Co to perform any of the Project Operations complies with this Part II of Schedule 24.
- (g) In connection with all information, records, documents, data and other materials delivered by Project Co to HMQ during the Termination Transition Period as required in this Part II of Schedule 24 (collectively, the **"Project Co Materials"**) Project Co shall deliver to HMQ a certificate of an officer of Project Co addressed to HMQ and New Project Co, in form and substance satisfactory to HMQ, certifying, among other things, that:
  - (i) all Project Co Materials delivered to HMQ and New Project Co are true, accurate and complete copies of the originals of all such Project Co Materials;
  - (ii) with respect to the Project Co Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Project Co and any persons:
    - (A) all are in good standing and in full force and effect with no amendments and Project Co is entitled to all rights and benefits thereunder;
    - (B) Project Co has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and
    - (C) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and
  - (iii) other than the Project Co Materials there no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project Operations.
- (h) Without limiting the generality of Section 2.2(a), Project Co shall:

- (i) during the Termination Transition Period and the Post-termination Period, post such notices on the homepage of the Website, and on such other pages of the Website, and with such prominence, as HMQ requests; and
- (ii) as of the Termination Date or the Expiry Date, as applicable, make such deletions to the hyper-linkages to the Website as HMQ, acting reasonably, requests,

to assist with the safe, orderly, effective and efficient transition of the Project Operations to HMQ or the New Project Co.

2.3 **Post-termination Obligations.** Without limitation to any other obligations of Project Co under Sections 2.1 and 2.2, upon the occurrence of the Termination Date or Expiry Date, as applicable:

- (a) subject to Sections 2.1 and 2.2,
  - (i) Project Co shall immediately cease to be (and shall immediately cease to represent itself to be) authorized to perform the Project Operations; and
  - (ii) Project Co shall cease, and shall cause all Project Co Parties to immediately cease, to perform the Project Operations, effective as of the Termination Date or Expiry Date;
- (b) Project Co shall promptly provide HMQ with a list of all agreements then in force and to which Project Co is a party that relate to the performance of the Project Operations or the subject matter of the Project Agreement (including any agreements with Project Co Parties), and copies of all such agreements as HMQ requests;
- (c) each Party shall pay to the other Party all amounts and charges as have or will thereafter become due pursuant to the Project Agreement and are then unpaid;
- (d) Project Co shall return to HMQ all computer equipment, supporting equipment and software forming part of the HMQ IT Systems in Project Co's possession or control;
- (e) Project Co shall promptly return to HMQ all copies of any Policy Manuals in Project Co's possession or control; and
- (f) Project Co shall promptly provide to HMQ the customer service protocols (including any protocols for Project Co's help desk) and information technology protocols in effect at the time of such Termination Date or Expiry Date that relate to the subject matter of the Project Agreement.

2.4 **HMQ Option to Purchase/License.**

- (a) For the purposes of this Part II of Schedule 24 the following terms have the following meanings:
  - (i) **"Project Co Assets"** means the Project Co-leased Assets, Project Co licensed Assets, Project Co owned Intangible Assets, Project Co owned Premises and Project Co owned Tangible Assets.

- (ii) **“Project Co leased Assets”** means the assets (including real property and personal property) leased or subleased by Project Co or any Project Co Party from third parties and directly or indirectly used in connection with the performance of the Project Operations.
  - (iii) **“Project Co licensed Assets”** means the assets licensed or sublicensed by the Project Co or any Project Co Party from third parties and directly or indirectly used in connection with the performance of the Project Operations.
  - (iv) **“Project Co Marks”** means trade names, trade-marks, logos, symbols, motifs, designs, trade dress, “look and feel” or identifying indicia developed and approved for use by HMQ in association with the Service Delivery Points or the performance of the Project Operations.
  - (v) **“Project Co owned Intangible Assets”** means the intangible assets owned by Project Co or any Project Co Party and directly or indirectly used in connection with the performance of the Project Operations and includes software, data and information in any form or medium.
  - (vi) **“Project Co owned Tangible Assets”** means the tangible personal property, including Equipment and Furnishings, owned solely by the Project Co or by any Project Co Party and reasonably required by the Project Co or such Project Co Party to perform the Project Operations, and used by the Project Co or such Project Co Party solely to perform the Project Operations.
- (b) Subject to Subsection 2.4(c), HMQ shall have the option (the **“Purchase/License Option”**) to do any or all of the following:
- (i) purchase any or all of Project Co owned Tangible Assets for a purchase price of \$[REDACTED];
  - (ii) take an assignment or sublicense of any or all of the Subcontracts;
  - (iii) take an assignment of any or all of the leases or subleases for Project Co leased Assets;
  - (iv) take an assignment or sublicense of any or all of the licences or sublicenses for Project Co licensed Assets;
  - (v) license from Project Co for a term of 2 years any or all of Project Co owned Intangible Assets for a licence fee of \$[REDACTED]; or
  - (vi) lease from Project Co any or all of Project Co owned Premises, other than those DE Premises that constitute DE Multi-Use Locations, pursuant to Section 1.4 of Schedule 7 – Service Delivery Points and DE Premises.
- (c) (i) HMQ may exercise the Purchase/License Option at any time up to the later of:
- (A) the Termination Date or the Expiry Date, as applicable; or

- (B) 90 days after the date on which HMQ receives (or itself completes, as the case may be) the list of Project Co Assets as provided in Schedule 26 - Record Provisions, provided that HMQ requests the list within 30 days after the Termination Date or the Expiry Date, as applicable.
- (ii) To exercise the Purchase/License Option, HMQ must give notice to Project Co, within the period of time contemplated in Paragraph 2.4(b)(i), setting out:
  - (A) Project Co owned Tangible Assets that HMQ wishes to purchase;
  - (B) the Subcontracts that HMQ wishes Project Co to assign or sublicense to HMQ;
  - (C) the leases or subleases for Project Co leased Assets that HMQ wishes Project Co to assign to HMQ;
  - (D) the licenses or sublicenses for Project Co licensed Assets that HMQ wishes Project Co to assign or sublicense to HMQ;
  - (E) Project Co owned Intangible Assets that HMQ wishes to license from Project Co; and
  - (F) Project Co owned Premises that HMQ wishes to lease from Project Co.
- (d) If HMQ exercises the Purchase/License Option in accordance with Section 2.4(c), the transactions in respect of which the Purchase/License Option is exercised shall be evidenced by an agreement in form and substance acceptable to HMQ, which agreement may, at the request of HMQ, be entered into by a person identified by HMQ instead of HMQ.
- (e) If HMQ exercises the Purchase/License Option in respect of some but not all of Project Co Assets, Project Co may remove the remaining Project Co Assets from the Service Delivery Points within 30 days, failing which HMQ may remove or have removed such remaining Project Co Assets at the cost of Project Co.
- (f) Following any such removal by or for HMQ, HMQ may dispose of such Project Co Assets, in whole or in part, in such manner as HMQ considers appropriate.
- (g) The proceeds of such disposition shall be applied first in payment of all expenses incurred by HMQ in connection with the removal and disposition of such Project Co Assets, then in payment of any amounts owing by Project Co to HMQ or any other entity of the Government of Ontario (whether under this Agreement or otherwise) and the balance, if any, shall be paid to Project Co.
- (h) Any such Project Co Assets not so removed by Project Co may be used by HMQ free of charge at the Service Delivery Points.

**2.5 HMQ Trade-marks and Project Co Marks.**

- (a) Upon the Termination Date or Expiry Date, as applicable, Project Co shall:
  - (i) immediately cease to use any HMQ Trade-marks and Project Co Marks; and
  - (ii) if requested by HMQ, assign and transfer to HMQ all of Project Co's right, title and interest in and to the Project Co Marks free and clear of all liens and encumbrances of any kind.
- (b) Without limiting the provisions of Subsection 2.6(a), Project Co shall, within 5 Business Days after the earlier of:
  - (i) the date of expiration of the period of time during which HMQ may exercise the Purchase/License Option, as provided in Subsection 2(b); and
  - (ii) the date on which HMQ exercises the Purchase/License Option,remove the HMQ Trade-marks and the Project Co Marks from all Project Co Assets (including all signs, slogans, symbols, letterheads, stationery and all documents, instruments or forms of whatever character which use any of the HMQ Trade-marks or Project Co Marks) other than any Project Co Assets in respect of which HMQ exercises the Purchase/License Option.

**2.6 Transfer of Telephone Numbers.**

- (a) Upon the Termination Date or Expiry Date, as applicable, Project Co shall, if so requested by HMQ, transfer to and vest in HMQ all interest in and right to use all telephone numbers (including toll-free numbers) and all listings and all e-mail addresses, applicable to the Service Delivery Points or the performance of the Project Operations. Such numbers, listings and e-mail addresses shall not include numbers, listings or e-mail addresses of a personal nature to Project Co and not relating or referring to any Service Delivery Points or Project Operations.
- (b) Upon any such transfer to and vesting in HMQ, HMQ shall have the exclusive right to use such numbers, listings and e-mail addresses and to authorize their use by any other Person.
- (c) To facilitate the completion of any such transfer and vesting, Project Co shall pay, in the case of such numbers and listings, to the applicable telephone company (and to any applicable long distance, toll-free and other service provider), and in the case of e-mail addresses, to the applicable service provider, all charges and other amounts payable up to and including the date of transfer and vesting in connection with the telephone numbers, listings and e-mail addresses being so transferred and vested. Project Co shall reimburse HMQ upon demand for any such amounts paid by HMQ on behalf of Project Co.

**2.7 Public Announcements.** All public announcements by either party concerning the termination or expiry of the Project Agreement shall be made in accordance with Schedule 18 – Communications Protocol



2.8 **Costs.** Project Co shall be solely responsible for all costs associated with the performance of its obligations pursuant to this Schedule 24 – Transition Procedures.

For Information Purposes Only

**SCHEDULE 25**

**INSURANCE AND PERFORMANCE  
SECURITY REQUIREMENTS**

**ARTICLE 1  
PROJECT TERM INSURANCE COVERAGE**

- 1.1 Subject to Section 7 of this Schedule 25, from and after the Commencement Date and until the Termination Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Property;
  - (b) Boiler and Machinery;
  - (c) Commercial General Liability and Non-Owned Automobile Liability;
  - (d) Errors and Omissions;
  - (e) Automobile Liability;
  - (f) Comprehensive Crime; and
  - (g) WSIB.

**ARTICLE 2  
NO LIMIT ON RECOVERY**

- 2.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by HMQ or by Project Co, shall in no way limit Project Co’s liability or obligations to HMQ or HMQ’s liability or obligations to Project Co, as applicable.

**ARTICLE 3  
ADDITIONAL COVER**

- 3.1 Without prejudice to the other provisions of this Schedule 25, HMQ and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 3.2 HMQ reserves the right to require Project Co to purchase such additional insurance coverage as HMQ may reasonably require. HMQ also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Operations, contract value, industry standards, and availability of insurance) as HMQ may reasonably require

from time to time. Any additional costs of such additional and/or amended insurance shall be borne by HMQ and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of HMQ.

#### **ARTICLE 4 RESPONSIBILITY FOR DEDUCTIBLES**

- 4.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

#### **ARTICLE 5 COOPERATION WITH INSURER'S CONSULTANT**

- 5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then HMQ and Project Co shall, and shall require the HMQ Parties and the Project Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
  - (b) allow the insurer and its consultant to attend meetings between Project Co and HMQ (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

#### **ARTICLE 6 BENCHMARKING OF INSURANCE COSTS**

- 6.1 [INTENTIONALLY DELETED]
- 6.2 [INTENTIONALLY DELETED]

#### **ARTICLE 7 UNINSURABLE RISKS**

- 7.1 The term "Uninsurable Risk" means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
    - (i) where Applicable Laws require that the insurer must be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or

- (ii) where Applicable Laws do not require that the insurer must be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of this Project Agreement; or
- (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

Project Co has the onus of demonstrating, to HMQ's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 7.2 Project Co shall notify HMQ as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide HMQ with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 7.3 Project Co and HMQ shall, as soon as possible following the provision of the notice referred to in Section 7.2 of this Schedule 25, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and HMQ are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 7.4 In the event that Project Co and HMQ, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 7.2 of this Schedule 25, HMQ may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, and demand that Project Co pay to HMQ forthwith (or withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co) an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or
  - (b) terminate this Project Agreement in accordance with Section 47.1 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 47.1 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 - Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 7.5 On the occurrence of an Uninsurable Risk, HMQ may, in its absolute discretion, either:
- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 47.1 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 47.1 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 - Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 7.6 With respect to any Uninsurable Risk:
- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
  - (b) Subject to Section 7.6(a) of this Schedule 25, Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.
- 7.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 7 shall no longer apply to such risk.
- 7.8 From and after the Commencement Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

## **ARTICLE 8 TOTAL OR SUBSTANTIAL DESTRUCTION**

- 8.1 In the event of damage to, or destruction of, all or substantially all of any DE Premises which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of any assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

## **ARTICLE 9 SUBCONTRACTORS**

- 9.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which HMQ may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 9.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;

- (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule 25 or who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in this Project Agreement regarding new and replaced Subcontractors shall be complied with.

#### **ARTICLE 10 RENEWAL**

- 10.1 Project Co shall provide to HMQ, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to HMQ, acting reasonably.

#### **ARTICLE 11 NAMED AND ADDITIONAL INSURED AND WAIVER OF SUBROGATION**

- 11.1 All insurance provided by Project Co, shall:
- (a) include Project Co, HMQ, IO, MTO and any other party specified in Appendix A of this Schedule 25 as Named Insureds to the extent specified in Appendix A of this Schedule 25 or as required pursuant to any agreement relating to the Project to which Project Co is a party;
  - (b) include HMQ, IO, MTO, the Lenders, the Lenders' Agent and any other party specified in Appendix A of this Schedule 25 as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25 or as required pursuant to any agreement relating to the Project to which Project Co is a party;
  - (c) except with respect to the Errors and Omissions, Automobile Liability, Comprehensive Crime and WSIB specified in Section 1.1 and Appendix A to this Schedule 25, contain a waiver of subrogation as against HMQ, HMQ Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than design consultants) and agents;
  - (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
  - (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to HMQ without any right of contribution of any insurance carried by HMQ.
- 11.2 Notwithstanding that "HMQ" includes each ministry, agency, board or other subdivision, department or branch of HMQ, for purposes of this Schedule 25, including Appendix A hereto,

certain ministries and agencies of HMQ are listed as Named Insureds and/or Additional Insureds for greater certainty and for insurance evidence requirements.

**ARTICLE 12  
CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 12.1 Prior to the Commencement Date, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to HMQ no later than 90 days after the Commencement Date.

**ARTICLE 13  
FAILURE TO MEET INSURANCE REQUIREMENTS**

- 13.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to HMQ a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then HMQ shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at HMQ's option, be payable by Project Co to HMQ on demand or be deducted by HMQ from the next payment or payments otherwise due to Project Co.
- 13.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by HMQ, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

**ARTICLE 14  
MODIFICATION OR CANCELLATION OF POLICIES**

- 14.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the addresses specified, to HMQ, the Lenders and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 14.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the addresses specified, to HMQ, the Lenders and the Lenders' Agent.

- 14.3 Only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Appendix A to this Schedule 25.
- 14.4 With respect to insurances described in Section 1.1 (a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Project Co, HMQ, IO, MTO, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

## **ARTICLE 15 INSURERS**

- 15.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to HMQ and the Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 15.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A. M. Best Company (Best); or
  - (b) a Long-Term Financial Strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or
  - (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to HMQ and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

## **ARTICLE 16 POLICY TERMS AND CONDITIONS**

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to HMQ and its insurance advisors, acting reasonably.
- 16.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.



**ARTICLE 17  
FAILURE TO COMPLY**

- 17.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

**ARTICLE 18  
PERFORMANCE SECURITY REQUIREMENTS**

18.1 [REDACTED]

18.2 [INTENTIONALLY DELETED]

18.3 [REDACTED]

**ARTICLE 19  
INSURANCE TRUST AGREEMENT**

All losses under (i) the Property Insurance; and (ii) the Boiler and Machinery Insurance carried by Project Co, which, in each case relate to Equipment purchased or leased by HMQ or MTO, shall be payable solely to HMQ or MTO and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement

## Appendix A – Insurance Requirements

## From Commencement Date until Termination Date

## Insurance to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
<b>“All Risk” Property</b>	Full Replacement Cost of all property associated with the Facility while on the Site or while in transit including material and supplies destined for incorporation into the Facility or intended to be used in the performance of Project Co services and all DE Assets.  Business Interruption (Gross Revenue or Gross Profits Form), – 12 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-site  Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit)	[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake \$[REDACTED] Flood \$[REDACTED] All other losses 30 days waiting period applicable to time element coverages	All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured, and including necessary Business Interruption and Expediting Expenses.  Coverage shall be maintained continuously from Commencement Date and at all times thereafter until the Termination Date.  Such insurance will include Transit, By-Laws and Off Premises coverage.  This coverage shall be primary with respect to the Project Operations without right of contribution of any insurance carried by HMQ, MTO, IO or the Lenders.
Principal Extensions:			

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>Replacement Cost Valuation (Property)</li> <li>Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>Flood (to policy limit with annual aggregate)</li> <li>Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>Debris Removal (minimum \$[REDACTED] sub-</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	limit)		
	<ul style="list-style-type: none"> <li>Transit (minimum \$[REDACTED] sub-limit)</li> <li>Unnamed locations (minimum \$[REDACTED] sub-limit)</li> <li>Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>\$[REDACTED] sub-limit)</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable)</li> <li>By-Laws including demolition and increased replacement / repair costs</li> <li>Off Premises Services Interruption</li> <li>Margin of profit extension for contractors</li> <li>Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	arranged)		
Permitted Exclusions:			
	<ul style="list-style-type: none"><li>• Cyber risk</li><li>• Mould, fungi and fungal derivatives</li><li>• Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured</li><li>• War risk</li><li>• Terrorism</li><li>• Nuclear or radioactive contamination, except radioactive isotopes intended for scientific,</li></ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	medical, industrial or commercial use		
<i>Comments</i>	<ul style="list-style-type: none"><li>• Named Insured will include Project Co, HMQ, MTO, IO and the Lenders – Lenders will be covered as Loss Payee and Mortgagee</li><li>• All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li><li>• No provision allowing a coinsurance penalty</li><li>• Waiver of Subrogation against all Named Insureds, including but not limited to Project Co, the Lenders, Lenders' Agent as well as officers, employees, servants and agents of the foregoing</li></ul>		
<i>Underwriters</i>	Principal underwriters in compliance with Article 15 of this Schedule 25		

**Driver Examination Services**

**From Commencement Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Cover
<b>Boiler &amp; Machinery</b>	Full Replacement Cost	[\$[REDACTED]] per claim, Direct Damage	Boiler & Machinery insurance on a Comprehensive Policy Form basis including HVAC on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary Business Interruption and Expediting and Extra Expense coverage.
	Business Interruption (Gross Revenue or Gross Profits Form) – 12 months period of indemnity – including interdependency and contingent coverage re: losses at key supplier premises, property in transit or in storage off-site. If a covered accident to insured objects(s) causes an interruption to services or activities, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period	Business Interruption – Maximum 30 day Waiting Period	Coverage shall be maintained continuously from Commencement Date and at all times thereafter until the Termination Date.  Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.  This coverage shall be primary with respect to the Project Operations without right of contribution of any insurance carried by HMQ, MTO, IO or the Lenders.
	Sub-limits (\$[REDACTED] each):		
	<ul style="list-style-type: none"> <li>Ammonia Contamination</li> <li>Automatic Coverage</li> </ul>		



Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"><li>• Bylaws</li><li>• Errors and Omissions</li><li>• Expediting Expenses</li><li>• Extra Expense</li><li>• Hazardous Substances</li><li>• Professional Fees</li><li>• Water Damage</li></ul>		
<i>Comments</i>	<p>Named Insured will include Project Co, HMQ, MTO, IO and the Lenders – Lenders will be covered as Loss Payee and Mortgagee</p> <p>As nearly as possible, coverage will be structured to dovetail with the Property Insurance</p>		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 15 of this Schedule 25		

**Driver Examination Services**

**From Commencement Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Cover
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	<p>[\$REDACTED] each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance</li> <li>• \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution</li> <li>• \$[REDACTED] “All Risks” Tenants’ Legal Liability, if any exposure exists</li> <li>• \$[REDACTED] Prairie</li> </ul>	<p>[\$REDACTED] per occurrence</p>	<p>Commercial General Liability insurance covering all Project Operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from Commencement Date and at all times thereafter until the Termination Date.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Project Operations without right of contribution of any insurance carried by HMQ, MTO, IO or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	or Forest Fire Fighting Expense		
	<ul style="list-style-type: none"> <li>• \$[REDACTED] Employee Benefits Administrative Errors and Omission Liability</li> <li>• \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94) , unless coverage provided under automobile liability insurance</li> <li>• \$[REDACTED]/\$ [REDACTED] Medical Payments</li> </ul>		
	Principal Extensions:		
	<ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written and oral)</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
			<ul style="list-style-type: none"><li>• Direct and Contingent Employers Liability</li><li>• Employee Benefits Administrative Errors and Omissions</li><li>• Personal Injury (nil participation)</li><li>• Cross Liability and Severability of Interest with respect to each insured party</li><li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li><li>• Non-Owned Automobile Tenants' Legal Liability (All Risks) – subject to</li></ul>

Type	Amount	Maximum Deductibles	Principal Cover
	sub-limit		
	<ul style="list-style-type: none"> <li>Medical Expenses – subject to sub limit</li> <li>Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit</li> <li>Permission for unlicensed vehicles' partial road use</li> <li>Unlicensed Equipment</li> <li>Loss of Use Without Property Damage</li> <li>Loading and Unloading of Automobiles</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
			<ul style="list-style-type: none"><li>• Broad Form Property Damage</li><li>• Broad Form Completed Operations</li><li>• Intentional Injury, committed to Protect Persons or Property</li><li>• Voluntary Compensation</li><li>• Worldwide Territory, subject to suits being brought in Canada or the US</li></ul>
			Permitted Exclusions:
			<ul style="list-style-type: none"><li>• Injury to employees, where WSIB provides valid coverage</li><li>• Property in the care,</li></ul>

Type	Amount	Maximum Deductibles	Principal Cover
	custody or control of the insured, except as provided under Broad Form Products and Completed Operations		
	<ul style="list-style-type: none"><li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Project Operations site</li><li>• Cyber risk</li><li>• Mould, fungi and fungal derivatives</li><li>• Professional liability of engineers, architects and other professional consultants</li><li>• Asbestos</li><li>• Nuclear or radioactive contamination, except</li></ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	radioactive isotopes intended for scientific, medical, industrial or commercial use		
	<ul style="list-style-type: none"> <li>Terrorism</li> </ul>		
Comments	<ul style="list-style-type: none"> <li>Named Insured includes Project Co and its Affiliates, HMQ, MTO, IO, the Lenders, Project Co Parties involved in the Project Operations, including all contractors, subcontractors, sub-subcontractors, suppliers while working on the Project Operations, tradesmen while working on the Site, engineers, architects, consultants and sub consultants, (other than for professional liability) and others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to Project Operations and the control and use of the Site</li> <li>Directors, officers, shareholders, employees of the insured parties involved in the Project Operations are covered as Additional Insureds</li> <li>Insurance primary without right of contribution of any other insurance carried by any Named Insured</li> <li>Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>Professional service activities integral to the Project Operations, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> </ul>		



**Driver Examination Services**

Type	Amount	Maximum Deductibles	Principal Cover
			<ul style="list-style-type: none"> <li>Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Project Co, HMQ, MTO, IO, all contractors, subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>
<i>Underwriters</i>	Principal underwriters in compliance with Clause 15 of this Schedule 25		

For Information Purposes Only

**Driver Examination Services**

**From Commencement Date until Termination Date**

**Insurance to be provided, or cause to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Cover
<b>Errors and Omissions</b>	Minimum \$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses	\$[REDACTED] per claim inclusive of defense and all costs and expenses	<p>Errors and Omissions insurance covering third party claims arising out of any error or omission in the performance (or failure to perform) any Project Operations relating to the DE Services and IT Services in connection with this Project Agreement.</p> <p>Coverage shall be maintained continuously from and after Commencement Date and at all times thereafter until the Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary with respect to the Project Operations without right of contribution of any insurance carried by HMQ, MTO, IO or the Lenders.</p>
	Principal Extensions:		
	<ul style="list-style-type: none"> <li>Duty to Defend</li> <li>Contractual Liability</li> </ul>		
	Permitted Exclusions:		
	<ul style="list-style-type: none"> <li>Terrorism</li> <li>Intentional Compliance</li> <li>WSIB</li> <li>War</li> </ul>	Non-	

**Driver Examination Services**

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>Employers Liability</li> <li>Nuclear Liability</li> <li>Professional Liability</li> </ul>		
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes Project Co and its Affiliates, including all contractors, subcontractors, sub-subcontractors, suppliers while working on the Project Operations</li> </ul>		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 15 of this Schedule 25		

**Driver Examination Services**

**From Commencement Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type	Maximum Deductibles	Principal Cover
<b>Automobile Liability</b>	<p>[\$[REDACTED]] (Minimum) for Project Co and Project Co's contractor vehicles</p> <p>[\$[REDACTED]] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the OM&amp;R Work site</p>	<p>Standard Ontario Owners Form For all vehicles operated by Project Co, all contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants operated in connection with the Project Operations.</p> <p>Coverage shall be maintained continuously from and after Commencement Date and at all times thereafter until the Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ, MTO, IO and the Lenders.</p>
<i>Underwriters</i>	Principal underwriters in compliance with Clause 15 of this Schedule 25	

**Driver Examination Services**

**From Commencement Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type	Maximum Deductibles	Principal Cover
<b>Comprehensive Crime</b>	<p>[\$[REDACTED] per extension</p>	<p>Comprehensive Crime insurance including coverage for Employee Dishonesty against the fraudulent/dishonest acts of employees of Project Co and its Affiliates, including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Coverage shall be maintained continuously from and after Commencement Date and at all times thereafter until the Termination Date.</p> <p>This coverage shall be primary with respect to the Project Operations without right of contribution of any insurance carried by HMQ, MTO, IO or the Lenders.</p>
<i>Underwriters</i>	Principal underwriters in compliance with Clause 15 of this Schedule 25	

**Driver Examination Services**

**From Commencement Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type		Maximum Deductibles	Principal Cover
<b>WSIB</b>	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the Project Operations, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the Project Operations, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the WSIB coverage maintained by any person involved in the Project Operations or confirmation of that person's exemption from WSIB coverage.</p>

## APPENDIX B

### COLLECTION ACCOUNT AGREEMENT

**THIS AGREEMENT** is made as of the 27th day of June, 2013

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the  
Minister of Transportation

(“**HMQ**”)

- AND -

**BANK OF MONTREAL**, acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

- AND -

[REDACTED]

(“**Project Co**”)

- AND -

**BNY TRUST COMPANY OF CANADA**, a corporation incorporated under the laws of  
Ontario

(the “**Collection Trustee**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement pursuant to which HMQ has, among other things, granted Project Co the right to perform and deliver the DE Services in accordance with the terms thereof.
- B. Under the Project Agreement, Project Co is required to: (i) make Monthly Concession Payments to HMQ pursuant to Section 4.6 of the Project Agreement and Section 2 of Part B of Schedule 20 – Payment Mechanism; (ii) pay Performance Penalties to HMQ pursuant to Section 31 of the Project Agreement and Part C of Schedule 20 – Payment Mechanism; and (iii) collect and remit to HMQ the MVAC Fee and the Licensing Fee in accordance with Section 34.1 of the Project

Agreement and Schedule 35 – Fee Collection (such fees to be collected and remitted by Project Co as referred to in this clause (iii) are, collectively, referred to herein as the “**HMQ Fees**”).

- C. In order to facilitate the amounts due to be paid by Project Co to HMQ pursuant to the Project Agreement, Project Co has established the Collection Account and has agreed to deposit all DE Service Revenue and the HMQ Fees collected by it as part of the performance of the Project Operations into the Collection Account and to grant the HMQ Security Interest to and in favour of HMQ in respect of the HMQ Collateral.
- D. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders’ Agent.
- E. The Parties hereto have agreed to enter into this Collection Account Agreement to provide for, *inter alia*, (i) the granting of the HMQ Security Interest, (ii) the subordination of the Security in favour of the HMQ Security Interest and (iii) the operation of the Collection Account including the disbursements of any amounts deposited into such account.

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

## **1. DEFINITIONS**

In this Collection Account Agreement, unless the context otherwise requires:

- (a) “Acceptable Credit Support” has the meaning given in the Lending Agreements.
- (b) “**Account Agreement**” has the meaning given in Section 7.1(b) of this Collective Account Agreement.
- (c) “**Activation Date**” means 12:01 a.m. on the date specified by HMQ in the Activation Notice delivered by HMQ to the Collection Trustee, which date which shall fall no sooner than the date of the Collection Trustee’s receipt of said Activation Notice.
- (d) “**Activation Notice**” means a notice from HMQ to the Collection Trustee substantially in the form appearing at Schedule “B” hereto.
- (e) “**Amounts**” means all amounts now or hereafter maintained by Project Co in, or standing to the credit of Project Co to the Collection Account as a result of any deposits or other credits, whether made before, on or after the date of this Collection Account Agreement thereto. For greater certainty, “**Amounts**” includes, without limitation, all interest on deposits and all other accretions and additions to those deposits, and all term deposits, renewals of term deposits, replacements or substitutions therefor and other certificates or evidence of debt held in, credited to, deposited in or maintained in the Collection Account.



- (f) **“Collection Account Agreement”** means this Collection Account Agreement, as it may be amended, restated, supplemented or otherwise modified or replaced from time to time.
- (g) **“Collection Account”** means the depository account in the name of Project Co described in Part I of Schedule “A” to this Collection Account Agreement and in any additional Schedule from time to time added to this Collection Account Agreement by written agreement among the Parties and all renewals thereof, substitutions therefor, accretions thereto and proceeds thereof.
- (h) **“Collection Trustee”** means BNY Trust Company of Canada, a trust company incorporated under the laws of Canada and its successors and permitted assigns.
- (i) **“DESRA Account”** means the depository account in the name of Project Co to be established by Project Co in accordance with Section 7.3(b).
- (j) **“DESRA Amounts”** means all amounts now or hereafter standing to the credit of Project Co as a result of any deposits or other credits, whether made before, on or after the date of this Collection Account Agreement to the DESRA Account. For greater certainty, **“DESRA Amounts”** includes, without limitation, all interest on deposits and all other accretions and additions to those deposits, and all term deposits, renewals of term deposits, replacements or substitutions therefor and other certificates or evidence of debt held in, credited to, deposited in or maintained in the DESRA Account (as determined jointly by Project Co and HMQ based on investment criteria no less favourable to Project Co than the investment criteria set out in the Lending Agreements).
- (k) **“DESRA Funding Date”** means the date on which the Senior Debt Amount is repaid in full.
- (l) **“HMQ DESRA Collateral”** has the meaning given in Section 7.4(a) of this Collection Account Agreement.
- (m) **“HMQ DESRA Obligations”** has the meaning given in Section 7.4(a) of this Collection Account Agreement.
- (n) **“HMQ DESRA Security Interest”** has the meaning given in Section 7.4(a) of this Collection Account Agreement.
- (o) **“HMQ Collateral”** has the meaning given in Section 5(a) of this Collective Account Agreement.
- (p) **“HMQ Obligations”** has the meaning given in Section 5(a) of this Collective Account Agreement.
- (q) **“HMQ Fees”** has the meaning given in the recitals to this Collection Account Agreement.

- (r) **“HMQ Lease”** means any lease, sublease or other agreement permitting occupancy of premises entered into between Project Co and Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure or any other Minister of Her Majesty the Queen in right of Ontario regarding a DE Premises.
- (s) **“HMQ Project Documents”** means the Project Agreement and all other documents to which both HMQ and Project Co are parties pursuant to or in connection with the Project Operations, as each may be amended, restated, supplemented or otherwise modified or replaced from time to time.
- (t) **“HMQ Security Interest”** has the meaning given in Section 5(a) of this Collective Account Agreement.
- (u) **“Lenders’ Activation Date”** means 12:01 a.m. on the date specified by the Lenders’ Agent in the Lenders’ Activation Notice delivered by the Lenders’ Agent to the Collection Trustee, which date shall fall no sooner than the date of the Collection Trustee’s receipt of said Lenders’ Activation Notice.
- (v) **“Lender Activation Notice”** means a notice from the Lenders’ Agent to the Collection Trustee substantially in the form appearing at Schedule “C” hereto.
- (w) **“Lenders’ Agent”** means Bank of Montreal, acting as agent for and on behalf of the Lenders.
- (x) **“Party”** means any of HMQ, Project Co, the Lenders’ Agent or the Collection Trustee and **“Parties”** means all of HMQ, Project Co, the Lenders’ Agent and the Collection Trustee.
- (y) **“Project Agreement”** means the project agreement made on or about June 27, 2013 between HMQ and Project Co as it may be amended, restated, supplemented or otherwise modified or replaced from time to time.
- (z) **“Project Co”** means [REDACTED].
- (aa) **“Qualified Investments”** has the meaning given in the Lending Agreements.
- (bb) **“Security”** means all existing and future security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents in the HMQ Collateral.
- (cc) **“Security Documents”** means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
  - (i) the general security agreement made on or about the date hereof between Project Co and the Lenders’ Agent; and
  - (ii) the DE Service Provider’s Direct Agreement.

- (dd) “Senior Debt Service Reserve Account” is the following account as defined in the Lending Agreements:

Beneficiary Bank: [REDACTED]  
SWIFT: [REDACTED]  
Beneficiary Name: [REDACTED]  
Beneficiary Account No.: [REDACTED]

- (ee) “**Senior DSRA Accounts**” means, collectively, the Senior Debt Service Reserve Account and the Supervening Events Reserve Account and “Senior DSRA Account” means either of them.

- (ff) “Supervening Events Reserve Account” is the following account as defined in the Lending Agreements:

Beneficiary Bank: [REDACTED]  
SWIFT: [REDACTED]  
Beneficiary Name: [REDACTED]  
Beneficiary Account No.: [REDACTED]

## 2. INTERPRETATION

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

- (a) The headings in this Collection Account Agreement are for convenience of reference only, shall not constitute a part of this Collection Account Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Collection Account Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Collection Account Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Capitalized terms used in this Collection Account Agreement but not otherwise defined herein shall have the meaning given to such terms in the Project Agreement.
- (e) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.

- (f) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Collection Account Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (g) The words in this Collection Account Agreement shall bear their natural meaning.
- (h) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Collection Account Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (i) In construing this Collection Account Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Collection Account Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (j) Where this Collection Account Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Where this Collection Account Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (l) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (m) Unless otherwise indicated, time periods will be strictly construed.
- (n) Whenever the terms “will” or “shall” are used in this Collection Account Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### 3. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Collection Account Agreement and the Project Agreement, the provisions of this Collection Account Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency. In the event of any ambiguity, conflict or inconsistency between the provisions of this Collection Account 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. For greater certainty, nothing contained in the Lenders' Direct Agreement shall prohibit, derogate, restrict or limit, in any way or in any manner whatsoever, the right of HMQ to issue an Activation Notice or the validity thereof, including without limitation in the context of or during: (i) any enforcement of the Security by the Lenders' Agent; or (ii) any Notice Period or Step-In Period.

### 4. PROJECT CO OBLIGATION TO MAKE DEPOSITS TO THE COLLECTION ACCOUNT

Project Co hereby agrees to direct or, immediately upon receipt, deposit into the Collection Account all DE Service Revenue. To the extent that Project Co is unable to do so, Project Co shall hold all DE Service Revenue in trust for HMQ and the Lenders, segregated from all other funds and other property of Project Co. The Collection Trustee shall not be responsible for notifying HMQ or the Lenders of, nor shall it be liable for, any breach by Project Co of its obligations in this Section 4.

### 5. HMQ SECURITY INTEREST

- (a) As general and continuing collateral security for the payment, fulfillment, satisfaction and discharge in full of: (i) the Monthly Concession Payments payable to HMQ pursuant to Section 4.6 of the Project Agreement and Section 2 of Part B of Schedule 20 – Payment Mechanism; (ii) any Performance Penalties payable to HMQ pursuant to Section 31 of the Project Agreement and Part C of Schedule 20 – Payment Mechanism; (iii) the HMQ Fees to be remitted to HMQ pursuant to the Project Agreement; (iv) any and all payment obligations or payment liabilities of or owing by Project Co to HMQ arising under, pursuant to, in respect of or in connection with any HMQ Lease; and (v) any and all other payment obligations or payment liabilities present or future, direct or indirect, absolute or contingent of or owing by Project Co to HMQ arising under, pursuant to, in respect of or in connection with the Project Agreement (collectively, the "**HMQ Obligations**"), Project Co hereby assigns, transfers and sets over and grants a first priority security interest (the "**HMQ Security Interest**") to and in favour of HMQ in: (a) the Collection Account; (b) the Amounts; and (c) any and all proceeds of each of the foregoing in whatever form and wheresoever located (collectively, the "**HMQ Collateral**"). For greater certainty, the HMQ Collateral shall not include amounts released by the Collection Trustee to the Lenders' Agent following the issuance of a Lenders' Activation Notice pursuant to Section 7.1(d) of this Collection Account Agreement.
- (b) The Collection Trustee is authorized and shall be entitled to make such debits, credits, correcting entries, and other entries to the Collection Account and the Collection

Trustee's records relating to Project Co and the Collection Account as it regards as desirable in order to give effect to HMQ's rights, the Lenders' Agent's rights hereunder.

- (c) The Lenders' Agent hereby: (i) acknowledges and consents to the grant of the HMQ Security Interest and the creation, registration, filing and perfection of the HMQ Security Interest; and (ii) confirms that the existence of the HMQ Security Interest shall not constitute a default or event of default under any of the Lending Agreements.

## **6. SUBORDINATION OF SECURITY IN FAVOUR OF HMQ SECURITY INTEREST**

The Lenders' Agent hereby postpones and subordinates all Security in or over the HMQ Collateral granted pursuant to any and all existing and future Security Documents to and in favour of the HMQ Security Interest. Notwithstanding any priority to which the Lenders' Agent or any of the Lenders, as applicable, may be or may hereafter become entitled for any reason whatsoever (including, without limitation, priority by date and the time or order of creating, granting or executing any document, the actual or alleged invalidity or unenforceability of the HMQ Security Interest, the perfection of, or the giving of notice or any demand for payment under the date of advance, registration, publication, filing or crystallization of or in respect of any Security contained in any existing or future Security Document and the security interests created thereby or by any provisions of any relevant law or statute), the HMQ Security Interest and all rights related thereto by law or otherwise shall have full and absolute priority over and with respect to any Security granted pursuant to any and all existing and future Security Documents, and the Security granted pursuant to any and all existing and future Security Documents shall in all respects be postponed and rank subordinate and junior to the HMQ Security Interest and all rights related thereto by law or otherwise until the parties hereto agree otherwise in writing or all of the HMQ Obligations are paid in full. HMQ hereby agrees not to take any action to enforce the HMQ Security Interest until such time that HMQ is entitled to terminate the Project Agreement in accordance with the provisions of the Project Agreement and the Lenders' Direct Agreement. Each of Project Co and the Lenders' Agent acknowledges and agrees that issuance by HMQ of an Activation Notice does not constitute an enforcement proceeding or an enforcement action commenced or taken by HMQ under or in respect of the HMQ Security Interest.

## **7. DISBURSEMENTS FROM COLLECTION ACCOUNT**

### **7.1 Prior to the Activation Date**

- (a) Prior to the Activation Date, the Collection Account shall be subject to instructions, written or otherwise, only from Project Co which alone, as between Project Co and HMQ, shall have all authority and right in connection with the Collection Account. The Collection Trustee shall be entitled to act upon the instructions of any person who the Collection Trustee believes, acting reasonably, is a person that Project Co has identified in writing from time to time to the Collection Trustee as being a person authorized by Project Co to give instructions to the Collection Trustee.
- (b) HMQ is hereby advised that, prior to the Activation Date, the Collection Account is subject to debits and funds transfers therefrom (including, without limitation, funds transfers to or for the benefit of Project Co), and other instructions, which transfers and instructions may be communicated, initiated or effected by Project Co either in writing,

verbally and/or by mechanical or electronic means pursuant to various account and service agreements or arrangements with the Collection Trustee from time to time (collectively, the “**Account Agreements**”). Project Co and HMQ acknowledge and agree that, on and after the Activation Date, and notwithstanding anything to the contrary contained in any of the Account Agreements or otherwise, the Collection Trustee shall no longer be required to be bound by, observe, perform or comply with, any of the Account Agreements and the Collection Trustee may forthwith terminate any or all of the Account Agreements or any portions or parts thereof, all without requirement for any notice of termination or any other notice to Project Co or HMQ whatsoever and each of Project Co and HMQ hereby irrevocably acknowledges and agrees to the foregoing and waives and releases the Collection Trustee from and against any and all claims, losses, costs and damages that each of them may incur or suffer as a result thereof.

- (c) The Collection Trustee will be fully protected in acting on any and all instructions given prior to the Activation Date by Project Co pursuant to or otherwise in connection with this Collection Account Agreement regarding the Collection Account without making any inquiry as to the right or authority of Project Co to give the instructions or as to the application of any payment or transfer made pursuant thereto. For greater certainty, Project Co hereby acknowledges and confirms that it shall not issue any payment instructions of any kind nor shall it deliver any other instructions, written or otherwise, to the Collection Trustee in connection with the Collection Account following receipt of an Activation Notice.
- (d) Where, pursuant to the Lenders’ Direct Agreement or the Lending Agreements, the Lenders are entitled to exercise remedies against Project Co which include directing Project Co as to the distribution of amounts from the Collection Account, the Lenders may issue a Lenders’ Activation Notice to the Collection Trustee. Following receipt of a Lenders’ Activation Notice and prior to recession in writing by the Lenders’ Agent of such Lenders’ Activation Notice, the Collection Account shall be subject to written instructions only from the Lenders’ Agent which alone, as between Project Co and the Lenders’ Agent, shall have all authority and right in connection with the Collection Account. The Collection Trustee shall be entitled to act upon the instructions of any person who the Collection Trustee believes, acting reasonably, is a person that the Lenders’ Agent has identified in writing from time to time to as being a person authorized by the Lenders’ Agent to give instructions to the Collection Trustee. The Lenders’ Activation Notice together with any written instructions issued by the Lenders’ Agent to the Collection Trustee shall automatically be suspended upon the issuance of an Activation Notice such that, until such Activation Notice has been terminated, the provisions of Section 7.2 shall apply as if no Lenders Activation Notice and no such written instructions to the Collection Trustee had been issued. The Lenders’ Agent covenants and agrees to deliver to HMQ a copy of each Lenders’ Activation Notice at the time the same is issued to the Collection Trustee.

## **7.2 Following the Activation Date**

- (a) An Activation Notice may only be issued by HMQ to the Collection Trustee following a failure or default by Project Co:

- (i) to pay the Monthly Concession Payments to HMQ pursuant to Section 4.6 of the Project Agreement and Section 2 of Part B of Schedule 20 – Payment Mechanism; or
  - (ii) to pay any Performance Penalties to HMQ pursuant to Section 31 of the Project Agreement and Part C of Schedule 20 – Payment Mechanism; or
  - (iii) to remit the HMQ Fees to HMQ; or
  - (iv) to pay all amounts owing by Project Co to HMQ under, pursuant to, in respect of or in connection with the HMQ Leases; or
  - (v) to pay all other amounts owing by Project Co to HMQ arising under, pursuant to, in respect of or in connection with the Project Agreement.
- (b) Commencing on the Activation Date, the Collection Trustee shall disburse and/or apply, as applicable, all Amounts in the Collection Account on the tenth day of each calendar month until the Activation Notice has been terminated in accordance with the provisions of this Collection Account Agreement as follows:
- (i) first, to the Collection Trustee to pay all outstanding fees, expenses and out-of-pocket disbursements of the Collection Trustee for the performance of its obligations under this Collection Account Agreement;
  - (ii) second, to HMQ: (i) to pay the Monthly Concession Payments to HMQ pursuant to Section 4.6 of the Project Agreement and Section 2 of Part B of Schedule 20 – Payment Mechanism; (ii) to pay any Performance Penalties to HMQ pursuant to Section 31 of the Project Agreement and Part C of Schedule 20 – Payment Mechanism; (iii) to remit the HMQ Fees to HMQ; (iv) to pay all amounts owing by Project Co to HMQ under, pursuant to, in respect of or in connection with the HMQ Leases; and (v) to pay all amounts owing by Project Co to HMQ pursuant to [REDACTED]; and
  - (iii) third, to Project Co.
- (c) HMQ shall terminate any Activation Notice following the remedy and satisfaction in full of all failures and defaults of or by Project Co that gave rise to such Activation Notice (whether pursuant to the application of the provisions of this Collection Account Agreement or otherwise) by providing written notice of same to the Collection Trustee with a copy being sent concurrently to Project Co. Immediately following receipt of such termination notice, the provisions of Section 7.1 of this Collection Account Agreement shall apply and the Collection Account shall be subject to written instructions only from Project Co, subject to the Collection Trustee receiving any further Activation Notice from HMQ.
- (d) For greater certainty, on and after the Activation Date, the Collection Account shall be subject to written instructions only from HMQ which alone, as between Project Co and



HMQ, shall have all authority and right in connection with the Collection Account (with any such written instructions from HMQ being consistent with the provisions of Sections 7.2(a) and 7.2(b)). The Collection Trustee shall be entitled to act upon the instructions of any person who the Collection Trustee believes, acting reasonably, is a person that HMQ has identified in writing from time to time to as being a person authorized by HMQ to give instructions to the Collection Trustee.

### **7.3 Security for the payment of the Post Termination DE Service Refund Amount**

- (a) On the date that is not more than 10 Business Days after the DESRA Funding Date, Project Co covenants and agrees to direct or, immediately upon receipt, deposit, transfer and remit, and to cause the Lenders' Agent to deposit, transfer and remit immediately, into the DESRA Account all amounts maintained and held in, and standing to the credit of Project Co in, the Senior DSRA Accounts, as at the DESRA Funding Date (but only after, for clarity, repayment in full of the Senior Debt Amount), and in the event that the aggregate of all such amounts is in excess of \$[REDACTED], then the amount in excess of \$[REDACTED] shall be released and remitted immediately by the Collection Trustee to Project Co upon the written instructions of Project Co which shall reference this Section 7.3(a). To the extent that Project Co fails to comply with its obligations set forth in this Section 7.3(a), in addition to and not in substitution for any other right or remedy available to HMQ under this Collection Account Agreement or the Project Agreement, Project Co shall hold all funds and amounts released to Project Co from the Senior DSRA Accounts in trust for HMQ segregated from all other funds and other property of Project Co. All amounts maintained and held in, and standing to the credit of Project Co in, the Senior DSRA Accounts in the form of Qualified Investments or Acceptable Credit Support shall be converted into cash (via sale, drawdown or other means) immediately prior to the same being deposited, transferred and remitted into the DESRA Account. For certainty, Qualified Investments and Acceptable Credit Support shall not be permitted to be deposited, transferred or remitted by Project Co or the Collection Trustee from the Senior DSRA Accounts into the DESRA Account.
- (b) On or before the date that is the sixth anniversary of this Agreement, Project Co covenants and agrees to establish the DESRA Account and provide to HMQ all DESRA Account information as HMQ may reasonably require including, without limitation, the same information in respect of the DESRA Account that has been provided in respect of the Collection Account. To the extent that Project Co fails to comply with its obligations set forth in this Section 7.3(b), in addition to and not in substitution for any other right or remedy available to HMQ under this Collection Account Agreement or the Project Agreement, Project Co shall hold all funds and amounts released to Project Co from the Senior DSRA Accounts in trust for HMQ segregated from all other funds and other property of Project Co.
- (c) Project Co hereby irrevocably authorizes and directs the Lenders' Agent to transfer and deposit all amounts held in the Senior DSRA Accounts by wire transfer (or other method of immediately available funds selected by HMQ) into the DESRA Account up to an amount equal to \$[REDACTED] pursuant to and as contemplated by Section

7.3(a) of the Collection Account Agreement, and the Lenders' Agent covenants and agrees not to transfer, disburse or pay to or to the order of Project Co or any other person, at any time, any amounts held or maintained in the Senior DSRA Accounts until such time after an amount equal to \$[REDACTED] has been transferred, remitted and deposited by the Lenders' Agent into the DESRA Account, except the Lenders' Agent shall be entitled to make disbursements from the Senior DSRA Accounts in accordance with the terms of the Lending Agreements.

- (d) Each of Project Co and the Lenders' Agent covenants and agrees to and in favour of HMQ not to authorize, approve or otherwise consent or agree to any reduction of or to the amounts required to be maintained by Project Co in either the Senior Debt Service Reserve Account or the Supervening Events Reserve Account pursuant to the Lending Agreements.
- (e) Beginning in the Contract Year beginning September 1, 2013, and continuing until the end of the Contract Year ending August 31, 2021, Project Co shall deliver to HMQ within five (5) Business Days after the end of each such Contract Year an Officer's Certificate setting forth the aggregate amount of funds held in the Senior Debt Service Reserve Account and the Supervening Events Reserve Account as at the end of such Contract Year.
- (f) Beginning in the Contract Year beginning September 1, 2021 and continuing until the amount on deposit in the DESRA Account equals or exceeds \$[REDACTED], Project Co shall deliver to HMQ within five (5) Business Days after the end of each financial quarter (being the month ending November, February, May and August) an Officer's Certificate setting forth the amount held in each of the Senior Debt Service Reserve Account and the Supervening Events Reserve Account as at the end of such quarter.
- (g) Beginning:
  - (i) on the DESRA Funding Date (but only after, for clarity, repayment in full of the Senior Debt Amount) and continuing up to and including May 31, 2023, no Distributions shall be paid or made in respect of the Equity Capital unless the amount on deposit and maintained in the DESRA Account is equal to or greater than \$[REDACTED] at the time of and immediately following such Distributions; and
  - (ii) on May 31, 2023 and provided the DESRA Funding Date has occurred and continuing until the Termination Date, no Distributions shall be paid or made in respect of the Equity Capital unless the amount on deposit and maintained in the DESRA Account is equal to or greater than \$[REDACTED] at the time of and immediately following such Distributions.
- (h) Project Co covenants and agrees that to the extent that Distributions are available or can be paid or made, Project Co shall fund the DESRA Account with an amount equal to the aggregate amount of such Distributions required to ensure that beginning:

- (i) on the DESRA Funding Date and continuing up to and including May 31, 2023, the DESRA Amounts, are not, at any time, less than \$[REDACTED]; and
  - (ii) on May 31, 2023 and continuing until the Termination Date, the DESRA Amounts are not, at any time, less than \$[REDACTED].
- (i) The failure of Project Co to comply its obligations set forth in Sections 7.3(a), 7.3(b), 7.3(c), 7.3(f) or 7.3(g) of this Collection Account Agreement shall, in each case, be deemed to be a failure by Project Co to comply with, or a default by Project Co in the performance of, the provisions of the Project Agreement, and constitute a Project Co Event of Default.
  - (j) The DESRA Amounts shall be released and remitted immediately by the Collection Trustee to HMQ upon the written instructions of HMQ which shall reference this Section 7.3(i) by the Termination Date (or on such earlier date (but only after, for clarity, the DESRA Funding Date has occurred) selected by Project Co (with written notice in this regard being given by Project Co to HMQ at least five (5) Business Days prior to such selected date)) to satisfy the payment of the Post Termination DE Service Refund Amount by Project Co to HMQ on the Termination Date pursuant to Section 1.7(b)(i) of Schedule 35 – Fee Collection. For certainty, the release of the DESRA Amounts to HMQ on the Termination Date shall reduce the amount owing by Project Co to HMQ in respect of the Post Termination DE Service Refund Amount, and the amount of the Post Termination DE Service Refund Amount that remains unpaid following such release to HMQ shall continue to be owing by Project Co to HMQ.
  - (k) All costs and expenses of, and associated with, the Collection Account and the DESRA Account shall be the sole responsibility and obligation of Project Co.
  - (l) For clarity, notwithstanding any other provision of this Section 7.3, it is acknowledged and agreed that the Lenders' Agent is expressly entitled to draw on the Senior DSRA Accounts and pay amounts therefrom in accordance with the terms of the Lending Agreements and such payments by the Lenders' Agent shall not constitute a Project Co Event of Default and no rights granted pursuant to Section 7.3 or 7.4 hereof shall in anyway restrict or derogate from such rights of the Lenders' Agent.
  - (m) Interest earned on all amounts held in the DESRA Account (based on the investment criteria determined jointly by Project Co and HMQ) shall accrue to the benefit of Project Co and shall remain in the DESRA Account as security for the payment by Project Co to HMQ of the Post-Termination DE Service Refund Amount.

#### 7.4 **HMQ DESRA Security Interest**

- (a) As general and continuing collateral security for the payment, fulfillment, satisfaction and discharge in full of the Post Termination DE Service Refund Amount payable by Project Co to HMQ pursuant to Section 34.1(b) of the Project Agreement and Section 1.7(b) of the Schedule 35 – Fee Collection (the "**HMQ DESRA Obligations**"),

Project Co hereby assigns, transfers and sets over and grants (subject in all respects to Sections 7.3(k) and 7.4(d) hereof) a first priority security interest (the "**HMQ DESRA Security Interest**") to and in favour of HMQ in: (a) the DESRA Account; (b) the DESRA Amounts including, for the avoidance of doubt, any amounts maintained in the DESRA Account; and (c) any and all proceeds of each of the foregoing in whatever form and wheresoever located (collectively, the "**HMQ DESRA Collateral**").

- (b) The Collection Trustee is authorized and shall be entitled to make such debits, credits, correcting entries, and other entries to the DESRA Account and the Collection Trustee's records relating to Project Co and the Collection Account as it regards as desirable in order to give effect to HMQ's rights hereunder.
- (c) The Lenders' Agent hereby (i) acknowledges and consents to the grant of the HMQ DESRA Security Interest and the creation, registration, filing and perfection of the HMQ DESRA Security Interest and (ii) confirms that the existence of the HMQ DESRA Security Interest shall not constitute a default or event of default under any of the Lending Agreements.
- (d) For greater certainty, no amounts shall be provided as security for the payment, fulfillment, satisfaction and discharge in full of the HMQ DESRA Obligations prior to the DESRA Funding Date.

## **8. COLLECTION TRUSTEE**

### **8.1 Appointment of Collection Trustee**

Each of Project Co and HMQ hereby irrevocably appoints, subject to Section 8.5(a), the Collection Trustee to act as collection trustee as contemplated by this Collection Account Agreement and any matter contemplated hereunder, and irrevocably authorizes the Collection Account Agreement together with all such rights, powers and discretions as are incidental hereto or thereto. The Collection Trustee shall have only those duties and responsibilities which are expressly specified in this Collection Account Agreement, and it may perform such duties by or through its agents or employees.

### **8.2 Collection Trustee's Responsibility**

The Collection Trustee shall deal with all Amounts in the Collection Account in accordance with the terms of this Collection Account Agreement. However, the Collection Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise, in carrying out of its duties under this Collection Account Agreement to the Parties or any other person including without limitation for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Collection Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct or negligence by the Collection Trustee.

### **8.3 Evidence on which the Collection Trustee May Act**

The Collection Trustee shall be protected in acting and relying upon any notice (including, without limitation, any Activation Notice), resolution, request, consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine, and to have signed or presented by the proper party or parties.

### **8.4 Indemnification of the Collection Trustee**

In addition to and without limiting any other protection of the Collection Trustee hereunder or otherwise by law, Project Co shall indemnify and save harmless the Collection Trustee from and against any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements, including any and all reasonable legal and advisor fees and disbursements of whatever kind or nature, which may at any time be suffered by, imposed on, incurred by or asserted against the Collection Trustee whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Collection Trustee in connection with its acting as collection trustee hereunder, provided the Collection Trustee has acted in good faith, without negligence and in accordance with its obligations hereunder. Notwithstanding any other provision hereof, this indemnity shall survive the removal or resignation of the Collection Trustee, the discharge of this Collection Account Agreement and the termination of any trust created hereby or in any other agreement.

### **8.5 Termination or Resignation of the Collection Trustee**

- (a) Notwithstanding the irrevocable appointment of the Collection Trustee, the appointment of the Collection Trustee hereunder may be terminated by Project Co and HMQ providing the Collection Trustee with sixty (60) days prior written notice to such effect.
- (b) The Collection Trustee may resign its appointment hereunder at any time without assigning any reason therefor by giving sixty (60) days prior written notice to such effect to each of Project Co and HMQ.
- (c) In the event of any such termination or resignation, the remaining Parties shall appoint a successor Collection Trustee and the retiring Collection Trustee shall assign absolutely to the successor Collection Trustee all of the right, title, benefit and interests assigned to it under this Collection Account Agreement. The successor Collection Trustee and each of the other Parties shall have the same rights and obligations among themselves as they would have had if such successor originally had been a party hereto as Collection Trustee. For greater certainty, no such termination or resignation shall be effective unless and until a successor Collection Trustee shall have been appointed. If no appointment of a successor Collection Trustee shall be made pursuant to the foregoing provisions of this Section 8.5(c) within forty-five (45) days after the termination or resignation of the Collection Trustee, either HMQ or the Collection Trustee, at Project Co's cost and expense, may apply to any court of competent jurisdiction to appoint a successor Collection Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Collection Trustee.

- (d) Any successor Collection Trustee appointed under this Collection Account Agreement shall execute, acknowledge and deliver to its predecessor Collection Trustee, and also to Project Co and HMQ, a written instrument of acceptance respecting such appointment, and thereupon such successor Collection Trustee, without any further act, deed or conveyance, shall become fully vested with all money, estates, properties, rights, power, duties and obligations of such predecessor Collection Trustee, with the effect as if originally named as Collection Trustee, but the Collection Trustee ceasing to act shall nevertheless, on the request of any one or more of Project Co or HMQ or of the successor Collection Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required to more fully and certainly vest in and confirm to such successor Collection Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by Project Co and/or HMQ, as applicable.

## **9. ASSIGNMENT**

- (a) No Party to this Collection Account Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Collection Account Agreement save as provided in this Section 9.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Collection Account Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to HMQ and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Collection Account Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, HMQ and the Lenders' Agent, each acting reasonably. HMQ and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) HMQ may assign, transfer or otherwise dispose of the benefit of the whole or part of this Collection Account Agreement to any person to whom HMQ assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Collection Account Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and HMQ of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lender's Agent may not assign, transfer or otherwise dispose of any interest in this Collection Account Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and HMQ on

substantially the same terms as this Collection Account Agreement and Project Co and HMQ shall enter into such new agreement with the assignee. Project Co and HMQ shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

## 10. NOTICES

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

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave  
Building B, 3rd Floor  
Downsview, Ontario M3M 1J8

Attn.: [REDACTED]

With a copy to:

Ministry of Transportation (Ontario)  
Legal Services Branch  
1201 Wilson Ave  
Building B, 1 S` Floor  
Downsview, Ontario M3M 1J8

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Collection Trustee:

BNY Trust Company of Canada  
320 Bay Street  
11th Floor  
Toronto, ON M5H 4A6

Fax: [REDACTED]

Attn: [REDACTED]

If to the Lenders' Agent:

Bank of Montreal  
First Canadian Place  
100 King Street West - 11th Floor

Toronto, ON  
M5X 1A1

Attn: [REDACTED]

- (b) Any Party to this Collection Account Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (c) Subject to Sections 10(d) and 10(e):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 10.
- (e) If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.
- (f) The Collection Trustee shall be entitled to treat a facsimile, pdf or e-mail communication or communication by other similar electronic means in a form satisfactory to the Collection Trustee ("**Electronic Methods**") from a person purporting to be (and whom such Collection Trustee, acting reasonably, believes in good faith to be) the authorized representative of the other Parties, as applicable, as sufficient instructions and authority of the appropriate party for the Collection Trustee to act and shall have no duty to verify or confirm that person is so authorized. The Collection Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions (absent wilful misconduct or negligence). The Parties (other than the Collection Trustee) agree: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Collection Trustee, including without limitation the risk of the Collection Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Collection Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the other Parties; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.



## **11. HMQ DESIGNATE**

At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Collection Account Agreement and Project Co and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. HMQ shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the parties to this Collection Account Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 11.

## **12. AMENDMENTS**

This Collection Account 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 Collection Account Agreement.

## **13. WAIVER**

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

## **14. RELATIONSHIP BETWEEN THE PARTIES**

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

## **15. ENTIRE AGREEMENT**

Except where provided otherwise in this Collection Account Agreement, this Collection Account 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 Collection Account Agreement.

## **16. SEVERABILITY**

Each provision of this Collection Account Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Collection Account 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 Collection Account Agreement. If any such provision of this Collection Account 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 Collection Account Agreement as near as possible to its original intent and effect.

## **17. ENUREMENT**

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

## **18. GOVERNING LAW AND JURISDICTION**

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

## **19. DISPUTE RESOLUTION PROCEDURE**

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

## **20. FURTHER ASSURANCE**

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

## **21. LANGUAGE OF AGREEMENT**

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

## **22. COUNTERPARTS**

This Collection Account Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Collection Account Agreement which was so faxed. Delivery of an executed counterpart of this Agreement by facsimile electronic transmission or by email transmission of a pdf (or similar) format document shall be as effective as delivery of a manually executed counterpart of this Collection Account Agreement.

## **23. CONFIDENTIALITY**

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

## **24. COPYRIGHT NOTICE**

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Collection Account Agreement.

## **25. WAIVER OF JURY TRIAL**

All parties agree to waive jury trial to extent permitted by Applicable Law.

## **26. CONSEQUENTIAL DAMAGES**

To the extent permitted by Applicable Law, no Party shall assert, and each Party hereby waives, under the Collection Account Agreement any claim for special, indirect, consequential or punitive damages of any kind whatsoever (including but not limited to loss of profit).

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

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

**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO**, as represented by the Minister  
of Transportation

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

Name: [REDACTED]

Title: [REDACTED]

For Information Purposes Only

*Signature Page to Collection Account Agreement*

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**Confidential – Economic Interests of Ontario**

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**BANK OF MONTREAL, as Agent**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the corporation.

*Signature Page to Collection Account Agreement*

[REDACTED]

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

Name:

Title:

By:

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

Title:

I/We have authority to bind the partnership.

*Signature Page to Collection Account Agreement*

**BNY TRUST COMPANY OF CANADA, as  
Collection Trustee**

By:

---

Name:

Title:

For Information Purposes Only

*Signature Page to Collection Account Agreement*

## Schedule A

### Collection Account Information

#### PART I

1. Financial Institution: [REDACTED]
- Transit: [REDACTED]
- Account No.: [REDACTED]



## Schedule B

### Activation Notice

To: BNY TRUST COMPANY OF CANADA (the "Collection Trustee")

Re: Collection Account Agreement dated June 27, 2013 among the Collection Trustee, Her Majesty The Queen In Right of Ontario as represented by the Minister of Transportation ("HMQ"), Bank of Montreal, as Agent and [REDACTED] ("Project Co") (as amended, restated, supplemented or otherwise modified from time to time, the "**Collection Account Agreement**").

Terms with initial capital letters in this notice and not otherwise defined herein shall have the meanings given to them in the Collection Account Agreement.

HMQ hereby notifies the Collection Trustee that the Activation Date shall occur on \_\_\_\_\_, 20\_\_ (such date being not sooner than the date of the Collection Trustee's receipt of this notice), such that, pursuant to Section 7 of the Collection Account Agreement, on the Activation Date and on each Business Day thereafter, the Collection Trustee shall transfer, prior to the end of each such Business Day, all amounts on deposit in the Collection Account as provided for in the Collection Account Agreement.

Dated \_\_\_\_\_, 20\_\_.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, as represented by the Minister of  
Transportation**

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

*Signature Page to Schedule B of Collection Account Agreement*

**Schedule C**

**Lenders' Activation Notice**

To: BNY TRUST COMPANY OF CANADA (the "Collection Trustee")

Re: Collection Account Agreement dated June 27, 2013 among the Collection Trustee, Her Majesty The Queen In Right of Ontario as represented by the Minister of Transportation ("HMQ"), Bank of Montreal, as Agent and [REDACTED] ("Project Co") (as amended, restated, supplemented or otherwise modified from time to time, the "**Collection Account Agreement**").

Terms with initial capital letters in this notice and not otherwise defined herein shall have the meanings given to them in the Collection Account Agreement.

The Lenders' Agent hereby notifies the Collection Trustee that the Lenders' Activation Date shall occur on \_\_\_\_\_, 20\_\_\_\_ (such date being not sooner than the date of the Collection Trustee's receipt of this notice), such that, pursuant to Section 7 of the Collection Account Agreement, on the Lenders' Activation Date and on each Business Day thereafter, the Collection Trustee shall transfer, prior to the end of each such Business Day, all amounts on deposit in the Collection Account as provided for in the Collection Account Agreement.

Dated \_\_\_\_\_, 20\_\_\_\_.

**Bank Of Montreal, as Agent**

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

*Signature Page to Schedule C of Collection Account Agreement*

**SCHEDULE 26****RECORD PROVISIONS****1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1 of this Schedule 26;
  - (b) in accordance with the Project Agreement;
  - (c) in accordance with the requirements of Good Industry Practice;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's and the DE Services Provider's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in electronic format without license or payment on Project Co's designated record keeping system and accessible by HMQ;
  - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 14 – Reporting Obligations of this Project Agreement; and
  - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain, at the Service Delivery Points or alternate locations as approved by HMQ all records pertaining to performance of Project Operations.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Records must not be unreasonably withheld or delayed, and must be stored in electronic form such that HMQ has access thereto and will continue to have access thereto, in a form that HMQ will be able to read, copy, download, and search without licence or payment.
- 1.5 Subject to Sections 1.6 and 1.7 of this Schedule 26, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for the full duration of Project Term, or such longer period as required by Applicable Law.

- 1.6 Project Co shall seek HMQ's written consent if Project Co wishes to destroy any records referred to in this Schedule 26 prior to the expiry of the retention period provided in Section 1.5. If HMQ declines to provide consent to the destruction of such records, Project Co will continue to retain and maintain such records in accordance with Section 1.5.
- 1.7 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to HMQ in the manner and to the location that HMQ shall reasonably specify. HMQ shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.7 of this Schedule 26 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
  - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.8 Where the termination of this Project Agreement arises:
- (a) as a result of an HMQ Event of Default or pursuant to Section 47.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by HMQ; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least 6 years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.9 Project Co shall provide to HMQ not later than 30 days after the end of each second fiscal quarter or after the end of each fiscal year, as applicable, part or all of which falls in a calendar year during the Project Term, a copy of Project Co's un-audited semi-annual financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP. Project Co shall provide to HMQ not later 120 days after the end of each fiscal year, part or all of which falls in a calendar year during the Project Term, a copy of Project Co's audited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 52 of this Project Agreement, shall be treated by HMQ as Confidential Information of Project Co.
- 2. Records To Be Kept**
- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:

- (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
- (b) all records relating to the appointment and replacement of the HMQ Representative and the Project Co Representative;
- (c) any documents relating to Project Co Permits, Licences and Approvals, including any refusals and appeals relating to any applications;
- (d) all training, operation, quality management and maintenance manuals;
- (e) any documents relating to events of Force Majeure, Relief Events and Excusing Causes;
- (f) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (g) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (h) any documents related to a Project Co Change in Ownership or Change in Control;
- (i) any documents relating to any Refinancing;
- (j) any documents relating to the performance of Project Operations;
- (k) any documents relating to Project Co's processes, procedures, and plans under this Project Agreement;
- (l) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
  - (i) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
  - (iii) the withholdings of any payments by Project Co; or
  - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (m) the financial accounts of Project Co referred to in Section 1.9 of this Schedule 26 above;
- (n) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
- (o) any documents relating to insurance and insurance claims;
- (p) all Jointly Developed Materials;

- (q) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement; and
  - (r) any other business records, as required by the HMQ from time to time.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1 of this Schedule 26.

For Information Purposes Only



## SCHEDULE 27

## DISPUTE RESOLUTION PROCEDURE

## 1. General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
  - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the HMQ Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the HMQ Representative, if given by HMQ, or by the Project Co Representative, if given by Project Co.

## 2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the HMQ Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

## 3. Amicable Resolution by Senior Officers of each Party

- 3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the

applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:

- (a) is in a position of authority above that of the HMQ Representative or the Project Co Representative, as the case may be; and
- (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.

3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

4. **[INTENTIONALLY DELETED]**

5. **Expert Determination**

5.1 If, following the process referred to in Section 2 and 3 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), any Dispute as to:

- (a) whether a Liquid Market exists;
- (b) whether amendments proposed by potentially Qualifying Tenders to this Project Agreement or other Project Documents are material;
- (c) the Adjusted Highest Qualifying Tender Price; or
- (d) the determination of the Estimated Fair Value in accordance with Schedule 23 - Compensation on Termination of this Project Agreement,

has not been resolved within 10 Business Days after the date the Dispute was referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect of a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time thereafter, by written notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the “**Expert**”).

5.2 The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert; and

- (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 27 for qualifications and experience of the Expert.
- 5.3 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1 of this Schedule 27, the Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed.
- 5.5 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
  - (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;
  - (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
  - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
  - (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 5.6 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert shall give reasons or a summary of reasons for the Expert's decision.

- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert's determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert's determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 27.

## 6. Adjudication

- 6.1 If, the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Section 5.1 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Section 5.9 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to a single adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the "**Adjudicator**").
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) and shall:
- (a) be independent of and at arm's length to Project Co, HMQ, the Lenders and any other person having an interest in the Project Operations or any of the Project Documents; and
  - (b) if the Dispute arises during the Project Term, be familiar with delivery of DE Services; and
  - (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure: Fourth Edition* terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the *Model Adjudication Procedure*, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Project Operations are operating

in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;

- (b) notwithstanding paragraphs 16 and 24 of the *Model Adjudication Procedure*, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event and/or Excusing Cause. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final;
- (c) notwithstanding paragraphs 29 and 30 of the *Model Adjudication Procedure*, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the *Model Adjudication Procedure*, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and

- (g) notwithstanding paragraph 34 of the *Model Adjudication Procedure*, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by HMQ unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, HMQ may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that HMQ undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 - Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to HMQ's right to contest the determination made by the Adjudicator in a subsequent proceeding. HMQ shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as an Excusing Cause, as applicable, if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

7. **Referral of Disputes to Arbitration or Litigation**

7.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 of this Schedule 27 or by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11 of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination or the Adjudicator's decision, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert, decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

- 7.2 If a Party is entitled to refer a Dispute to which Sections 5 or 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert nor the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

## 8. Resolution by Arbitration

- 8.1 Upon the mutual written consent of the Parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 5 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied,

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

- 8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

- 8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for

appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:

- (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
- (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
- (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
  - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
  - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
  - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
  - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.



- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;
  - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
  - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
  - (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
  - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
  - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;

- (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

## 9. Litigation

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Expert's award or determination pursuant to Section 5 of this Schedule 27, or of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:
- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or

- (b) if the Dispute is considered by HMQ to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination or the Adjudicator's determination, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator, Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

- 9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:

- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and
- (b) subject to Section 9.2(a), where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

## 10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

- 10.1 For all Disputes that arise in respect of any Section prior to Section Substantial Completion of the relevant Section, or in respect of the entire Extension prior to Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to Section Substantial Completion of the relevant Section or Substantial Completion, as applicable, shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Section Substantial Completion of the relevant Section or Substantial Completion, as applicable.

## 11. Consolidation with Third Party Disputes

- 11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party ("**Third Party Arbitration**"), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues ("**Project Agreement Arbitration**") shall be

stayed, consolidated or joined with the Third Party Arbitration(s) but only if HMQ, Project Co and the other parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.

11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
- (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues

in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. **[INTENTIONALLY DELETED]**

13. **Miscellaneous**

- 13.1 Project Co and HMQ shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Variations), Project Co shall proceed in accordance with the direction of HMQ, and in the event the matter in dispute is determined in favour of Project Co, then, subject to and in accordance with Schedule 22 - Variation Procedure, shall result in a Variation.
- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction where available pursuant to Applicable Law, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27 and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to HMQ, Project Co shall indemnify HMQ as provided for at Section 56.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to HMQ until the date of payment; or
  - (b) for amounts payable by HMQ to Project Co, HMQ shall indemnify Project Co as provided for at Section 56.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to HMQ or, as applicable, any underpayment or non-payment by HMQ from the date of any overpayment to HMQ or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to HMQ and the HMQ Representative.
- 13.5 HMQ shall ensure that any and all documents and other information in the possession or control of any HMQ Party that are available to HMQ and that may be necessary for the

resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.

13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:

- (a) extend any or all timelines set out in this Schedule 27;
- (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 5 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;
- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27; and
- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 5 of this Schedule 27.

## SCHEDULE 28

## REFINANCING

## 1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
  - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
  - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
  - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,
- and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.
- (b) **“Equity IRR”** means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- (c) **“Exempt Refinancing”** means:
- (i) [Intentionally deleted]
  - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
  - (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements and which relate to day-to-day administrative and supervisory matters;
  - (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
  - (v) any Qualifying Bank Transaction;

- (vi) any Rescue Refinancing;
  - (vii) any Refinancing that was approved by HMQ prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
  - (viii) any amendment, variation or supplement of any agreement approved by HMQ as part of any Variation under this Project Agreement; or
  - (ix) any Permitted Borrowing.
- (d) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(c)(i).
- (e) [Intentionally deleted]
- (f) [Intentionally deleted]
- (g) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
  - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls funds in excess of \$[REDACTED],
- provided such institution is not a Restricted Person or a person whose standing or activities (1) are inconsistent with HMQ’s role (in HMQ’s reasonable opinion) in the Province of Ontario, or (2) may compromise the reputation or integrity of HMQ and/or any HMQ Party, or (3) may compromise the procedures and requirements for the issuance of Driver’s Licences in the Province of Ontario so as to negatively affect public perception of those procedures and requirements.
- (h) **“Qualifying Bank Transaction”** means, in the ordinary course of a Lender’s Business:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
  - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
  - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (i) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (j) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;



- (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
  - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
  - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions of this definition.
- (k) **"Refinancing Financial Model"** means a comprehensive and detailed financial model satisfactory to HMQ, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
  - (ii) any changes in structure and funding since the date of this Project Agreement;
  - (iii) the performance of the Project Operations to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (l) **"Refinancing Gain"** means an amount equal to the greater of zero and  $(A - B)$ , where:
- A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- (m) **"Refinancing Notice"** has the meaning given in Section 2.9.
- (n) **"Rescue Refinancing"** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of HMQ, whether actual or potential.

## 2. REFINANCING

### 2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of HMQ, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered a notice of such Refinancing to HMQ within 5 Business Days of such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

### 2.2 HMQ may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of HMQ, whether actual or contingent, present or future, known or unknown.

### 2.3 HMQ shall be entitled to receive:

- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.

### 2.4 Project Co shall promptly provide HMQ with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. HMQ shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of

receiving a written request from HMQ, provide any information in relation to a proposed Refinancing as HMQ may reasonably require. Project Co shall keep HMQ informed as to any changes to the terms of the Refinancing. Both HMQ and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 Subject to Section 2.6 of this Schedule 28, HMQ shall have the right to elect to receive its share of any Refinancing Gain as:

(a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or

(b) an increase in the Monthly Concession Payments over the remaining Project Term,

such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal HMQ's share of the Refinancing Gain.

2.6 HMQ and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of HMQ's share of the Refinancing Gain (taking into account how HMQ has elected to receive its share of the Refinancing Gain under Section 2.5 of this Schedule 28 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of HMQ's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. Both HMQ and Project Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.

2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse HMQ for all such reasonable out-of-pocket costs incurred by HMQ. Project Co and HMQ shall not be entitled to claim as out-of-pocket costs, any charge, cost, expense, fee, or similar amount that is incurred by either Party in relation to the Refinancing outside of the ordinary course.

2.8 If Project Co must, at a future date, undertake a Mandatory Refinancing, then HMQ may at any time request that Project Co provide to HMQ full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the "**Refinancing Information**"). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, HMQ must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If HMQ and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then HMQ may provide Project Co with a Refinancing Notice pursuant to Section 2.9.

2.9 If HMQ considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, HMQ may, by notice in writing to Project Co (a "**Refinancing Notice**"), require Project Co to request potential funders to provide terms for a potential Refinancing.

- 2.10 The Refinancing Notice shall set out in reasonable detail the grounds upon which HMQ believes such funding terms to be available. Project Co and HMQ shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. HMQ shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.
- 2.11 If HMQ serves a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:
- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
  - (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
  - (c) either:
    - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to HMQ (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of HMQ that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
    - (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of HMQ for such belief and evidence to the reasonable satisfaction of HMQ that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.
- 2.12 Following receipt of the information referred to in Section 2.11(c)(i), HMQ shall acting reasonably, either:
- (a) instruct Project Co to implement the proposed Refinancing; or
  - (b) instruct Project Co to discontinue the proposed Refinancing
- provided that if HMQ reasonably considers that the requirements of Sections 2.11(c)(i) or (ii) have not been satisfied, HMQ may require Project Co to satisfy its obligations under Sections 2.11(c)(i) or (ii). If Project Co must, at a future date, undertake a Mandatory Refinancing, HMQ shall not instruct Project Co to implement the proposed Refinancing unless both HMQ and

Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

2.13 If HMQ instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) HMQ instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied,

then, HMQ shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by HMQ within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of HMQ that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) HMQ has, by prior written agreement, approved the use of such internal management resource.

2.15 HMQ shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

## SCHEDULE 29

## STANDBY LETTER OF CREDIT

*[NTD: The Standby Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]*

Letter of Credit: #[●]

Date: [●]

Ministry of Transportation  
[Insert Address]

Attn: [●]

Dear Sir/Madam:

**RE: Driver Examination Services**

At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of Dollars (\$[REDACTED]).

The amount available under this Letter of Credit is payable to Her Majesty the Queen in right of Ontario as represented by the Ministry of Transportation (“**HMQ**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [●] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the Financial Close Target Date] (the “**Expiry Date**”), and HMQ may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on the Expiry Date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the Expiry Date, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

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

Name:

Title:

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

Name:

Title:

**SCHEDULE 30**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 27<sup>th</sup> day of June, 2013

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the  
Minister of Transportation

(“**HMQ**”)

**AND:**

**BANK OF MONTREAL, acting as agent for and on behalf of the Lenders**

(the “**Lenders’ Agent**”)

**AND:**

[REDACTED]

(“**Project Co**”)

**AND:**

**BNY TRUST COMPANY OF CANADA, a trust company incorporated under the  
laws of Canada**

(the “**Account Trustee**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. HMQ, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. HMQ, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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



## 1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) **“Account Trustee”** means BNY Trust Company of Canada.
- (b) **“Bank”** means The Bank of Nova Scotia.
- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change of Authorization Event”** has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (g) **“Default Period”** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (h) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (i) **“Insurance Policies”** has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (j) **“Insurance Proceeds”** has the meaning given in Section 4(b) of this Insurance Trust Agreement.
- (k) **“Insurance Trust Account”** means Account No. [REDACTED] at [REDACTED].
- (l) **“Insurance Trust Agreement”** means this insurance trust agreement.
- (m) **“Lenders”** has the meaning given in the Project Agreement.
- (n) **“Lenders’ Agent”** means Bank of Montreal, acting as agent for and on behalf of the Lenders.
- (o) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between HMQ, Project Co and the Lenders’ Agent.
- (p) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (q) **“Order”** has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (r) **“Party”** means any of HMQ, Project Co, the Lenders’ Agent or the Account Trustee, and **“Parties”** means all of HMQ, Project Co, the Lenders’ Agent and the Account Trustee.
- (s) **“Project”** has the meaning given in the Project Agreement.

- (t) **“Project Agreement”** means the project agreement made on or about June 27, 2013 between HMQ and Project Co.
- (u) **“Project Co”** means [REDACTED].
- (v) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (w) **“Project Operations”** has the meaning given in the Project Agreement.
- (x) **“Trust Property”** means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

## 2. INTERPRETATION

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

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

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

### 3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of HMQ.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, HMQ, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account, such funds shall be directed, used or advanced only for one of the following purposes:

- (i) the repair, reinstatement, restoration, rehabilitation or replacement of assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;
- (ii) the completion of the Project; or
- (iii) indemnification for any HMQ loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co under delay in start-up, soft costs or business interruption insurance shall be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if HMQ is entitled to indemnification under the Insurance Policies in respect of any loss incurred by HMQ, such related insurance proceeds are to be paid directly to HMQ by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty, it is understood and agreed that HMQ shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

#### 4. INSURANCE

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders’ Agent or HMQ (the “**Insurance Proceeds**”) as follows:
  - (i) subject to the last paragraph of Section 3(c), in the case of all property insurance policies that Project Co is required to maintain under the Project Agreement:
    - (A) if the Account Trustee has not received a Default Notice and:
      - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
      - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders’ Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or

- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as HMQ may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
  - (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to HMQ, to be distributed to the parties entitled thereto.
- (c) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
  - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
  - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, HMQ, may at any time or from time to time direct in writing.

## 5. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to HMQ all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as HMQ may from time to time request in writing.

## 6. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, HMQ or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received

instruction, advice or direction from the Lenders' Agent, HMQ or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).

- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).

- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
- (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or HMQ for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith

and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, HMQ and Project Co.

- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, HMQ, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, HMQ, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, HMQ, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by HMQ shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from HMQ.
- (o) Each of the Lenders' Agent and HMQ shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or HMQ which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an



individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to Section 6(o).

7. **LENDERS' AGENT AND HMQ RIGHTS TO DIRECT**

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by HMQ (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
  - (i) the Lenders' Agent shall cease to be entitled, and HMQ shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and HMQ shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that HMQ shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where an HMQ Event of Default has occurred. Where an HMQ Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by HMQ to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

8. **TERMINATION**

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
  - (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
  - (ii) the obligations of Project Co to HMQ have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender's Agent, HMQ, and Project Co have entered into a replacement insurance trust agreement on the same

terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory the Lenders' Agent, the Lenders and HMQ.

9. **ASSIGNMENT**

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, HMQ and Project Co.

10. **NOTICES**

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

If to HMQ:

Service Delivery Partnership Branch  
1201 Wilson Ave  
Building B, 3rd Floor  
Downsview, Ontario M3M 1J8

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee:

BNY Trust Company of Canada  
320 Bay Street  
11th Floor  
Toronto, ON M5H 4A6

Fax: [REDACTED]

Attn: [REDACTED]

If to the Lenders' Agent:

Bank of Montreal  
First Canadian Place  
100 King Street West - 11th Floor  
Toronto, ON  
M5X 1A1

Attn: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **11. AMENDMENTS**

- (a) This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its

face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.

**12. WAIVER**

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

**13. RELATIONSHIP BETWEEN THE PARTIES**

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

**14. ENTIRE AGREEMENT**

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

**15. SEVERABILITY**

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

**16. ENUREMENT**

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

**17. GOVERNING LAW AND JURISDICTION**

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**18. HMQ DESIGNATE**

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario or any other person as may be designated by any member of the Executive Council of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Insurance Trust Agreement and Project Co, the Lenders' Agent and the Account Trustee may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. HMQ shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 18.

**19. FURTHER ASSURANCE**

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

**20. LANGUAGE OF AGREEMENT**

- (a) Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

**21. COUNTERPARTS**

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

**22. COPYRIGHT NOTICE**

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

For Information Purposes Only

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

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**, as represented by the Minister of  
Transportation

Per:

---

Name: [REDACTED]

Title: [REDACTED]

For Information Purposes Only

*Signature Page to Insurance Trust Agreement*

**BANK OF MONTREAL**, as agent

by

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

Title:

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

Title:

*Signature Page to Insurance Trust Agreement*



[REDACTED]

by

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

Title:

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

Title:

I/We have authority to bind the partnership

*Signature Page to Insurance Trust Agreement*

**BNY TRUST COMPANY OF CANADA**

by

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

Title:

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

Title:

I/We have authority to bind the corporation

*Signature Page to Insurance Trust Agreement*

**SCHEDULE 31**

**PROJECT CO INFORMATION**

[REDACTED]

For Information Purposes Only

**SCHEDULE 32**  
**FINANCIAL MODEL EXTRACTS**  
[REDACTED]

For Information Purposes Only

SCHEDULE 33  
SECURITY STATEMENT

Employee/Agent Name:
Division:
Position #:

[REDACTED] (“**Project Co**”) is authorized to receive confidential information and personal information (collectively the “**Information**”) from Her Majesty the Queen in Right of Ontario, as represented by the Minister of Transportation (“**HMQ**”). Project Co and HMQ are committed to protecting this Information from unauthorized access, use or disclosure. The following policies have been adopted to address employees’ and agents’ responsibilities for handling and protecting this Information.

1. As an employee or agent of Project Co, you may access this Information only when necessary to perform your duties as such employee or agent in the course of your employment or agency. You must not access or use this Information for personal reasons. (Examples of inappropriate access or misuse of Information include, but are not limited to: making inquiries for personal use; or accessing Information about another person, including locating their residence address, for any reason not related to your work responsibilities or not authorized by Project Co.)
2. You may disclose Information only to individuals who have been authorized to receive it through appropriate procedures which have been authorized by HMQ. (Examples of unauthorized disclosures include but are not limited to: looking up someone’s address for a friend.)
3. You must take reasonable precautions to maintain the secrecy of any password you use to access Information electronically. Reasonable precautions include, but are not limited to: not telling others your password or knowingly allowing them to observe while you enter it at a terminal; and frequently changing your password (and, if you suspect your password has been used by someone else, changing it immediately and notifying Project Co); and selecting random passwords that are not easy for others to guess.
4. You must take reasonable precautions to protect data entry terminals and equipment from unauthorized access. Reasonable precautions include, but are not limited to: not leaving your terminal unattended while you are logged onto the system; exiting a database which contains any Information when you leave your workstation; securing your terminal with a locking device if one has been provided; storing in a secure place any user documentation to programs through which electronic access to any Information may be gained; and reporting any suspicious circumstances or unauthorized individuals you have observed in the work area to Project Co.

**I have read and I understand the security policies stated above, and will comply with them and any other security policies issued in the future by Project Co or HMQ. I understand that failure to comply with these policies may result in disciplinary action by Project Co and/or civil or criminal prosecution in accordance with applicable statutes.**

---

Signature of Employee/Agent

---

Date

---

Witnessed By

---

Date

**SCHEDULE 34**

**NOTIFIABLE INCIDENTS AND ROOT CAUSE ANALYSIS**

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For Information Purposes Only

PART 1  
**DEFINITIONS**

The following definitions shall have the following meanings:

- 1.1 **“DE Information”** means confidential information or Personal Information Processed by Project Co in connection with performance of Project Operations.
- 1.2 **“Disclose”** means directly or indirectly give, provide, distribute, exchange, sell, license, lease, disclose, make available or permit access to or use of, and **“Disclosed”**, **“Disclosing”** and **“Disclosure”** have corresponding meanings.
- 1.3 **“Notifiable Incident”** has the meaning set out in Part 3 of this Schedule 34.
- 1.4 **“Privacy Default”** means a breach of:
- (a) any Privacy Laws; or
  - (b) any of the provisions of this Project Agreement where such breach involves or results in any Disclosure, collection or use of Personal Information or other DE Information other than in accordance with such Project Agreement.
- 1.5 **“Privacy Laws”** means FIPPA and the provisions of any other Applicable Law from time to time that address the Processing of any Personal Information.
- 1.6 **“Process”** means directly or indirectly create, access, collect, process, receive, hold, store, use or Disclose, and **“Processed”** and **“Processing”** have corresponding meanings.
- 1.7 **“Personal Information”** has the meaning given to that term in FIPPA.
- 1.8 **“Root Cause Analysis”** means a process which assures that the cause of the incident is determined and corrective action is taken to prevent repetition.



PART 2  
**ROOT CAUSE ANALYSIS**

**2.1 Principles**

- (a) The Root Cause Analysis should establish a sequence of events to understand the relationships between causal factors, root cause(s) and the defined problem to prevent in the future.

**2.2 Project Co Responsibilities**

- (a) Project Co shall prepare and submit a Root Cause Analysis to the HMQ Representative within 5 business days:
- (i) If requested by MTO; and
  - (ii) In accordance with the requirements for a Root Cause Analysis set out in this Project Agreement.
- (b) Through a Root Cause Analysis, Project Co shall:
- (i) Define the incident and its significance to HMQ. (Situation Analysis);
  - (ii) Delineate the known (or suspected) causal relationships that combined to cause the incident;
  - (iii) Establish causal relationships between the root cause(s) and the defined incident;
  - (iv) Present the evidence used to support the existence of identified causes;
  - (v) Propose a solution(s) and explain how the proposed solution(s) will prevent recurrence of the defined incident;
  - (vi) Document the timeframe within which the solution will be implemented; and
  - (vii) Document all of the above in a final report to allow others to easily follow the logic of the analysis.

PART 3  
**NOTIFIABLE INCIDENTS**

**3.1 Project Co Responsibilities**

- (a) Project Co shall notify the HMQ Representative within 2 hours of becoming aware of the occurrence of the events defined below, in such manner as HMQ specifies from time to time:
- (i) an injury to a member of the public or an employee of Project Co or Project Co Party that occurred during the performance of Project Operations or resulted in the removal of the injured individual by an ambulance;
  - (ii) any event, especially a vehicle collision, that occurred during the performance of Project Operations that resulted in damage of public and/or private assets;
  - (iii) the death of a member of the public or an employee of Project Co that occurred during the performance of Project Operations or that resulted or may have resulted from an injury that occurred during the performance of Project Operations;
  - (iv) a criminal investigation (either commenced by law enforcement or by Project Co) or criminal charges with respect to the public at DE Premises, Project Co or a Project Co Party;
  - (v) any event where police are requested to attend a Service Delivery Point or are contacted to conduct an investigation relating to or in connection with Project Operations; or
  - (vi) a serious irregularity at Service Delivery Points;
  - (vii) a Privacy Default;
  - (viii) an event that may reasonably be expected to result in the cessation of the delivery of the DE Services at any DE Premises for at least four (4) consecutive normal hours of operation during a Business Day and to affect scheduled appointments at such DE Premises;
  - (ix) an event that had the result referred to in clause (h) where it was not reasonable to expect such result;
  - (x) a strike (as that term is defined in the Labour Relations Act (Ontario)) that might affect the delivery of the Project Operations is pending, occurs or is threatened;
  - (xi) evidence of sexual misconduct with respect to the public, Project Co, or a project Co Party at DE Premises;
  - (xii) evidence of bribery or another fraudulent act with respect to the public, Project Co or a Project Co Party pertaining to the performance of Project Operations;
  - (xiii) an event that had resulted in termination of a Project Co Party working at Service Delivery Points due to Fraud, Privacy Default, or breach of Policy Manuals;

- (xiv) any behavior by any Project Co Party that casts doubt on that Project Co Party's fitness to work at a Service Delivery Point for security reasons or that may cause any Project Co Party to be incompatible with the delivery of DE Services (i.e. serious moving violations such as impaired driving, hit and run, and road rage) ;
  - (xv) the results of an Investigation disclosing a criminal record, including full details thereof; and
  - (xvi) any other matter specified from time to time by HMQ
- (b) Project Co shall notify the HMQ Representative within 2 Business Days of becoming aware of the occurrence of the events defined below, in such manner as HMQ specifies from time to time:
- (i) an event where within 15 metres of a DE Premises a tenant moves in and offers for sale:
    - (A) liquor (as that term is defined in the Liquor License Act (Ontario)) except in the event the premises are used as a restaurant or are located within a larger retail store;
    - (B) sexually explicit products or services except in the event the premises are used as a convenience store;
    - (C) tobacco or tobacco-related products except in the event the premises are used as a convenience store; or
    - (D) products or services that HMQ considers to be incompatible with the promotion of safe driving as determined by HMQ, in its sole discretion.
  - (ii) any Ministry of Labour orders or charges issued to Project Co or Project Co Party;
  - (iii) an allegation of sexual misconduct with respect to the public, Project Co, or a project Co Party at DE Premises;
  - (iv) an allegation of bribery or another fraudulent act with respect to the public, Project Co or a Project Co Party pertaining to the performance of Project Operations;
  - (v) the falsification of a document or record by the public, Project Co, or a Project Co Party pertaining to the performance of Project Operations;
  - (vi) any other matter specified from time to time by HMQ;

**SCHEDULE 35****FEE COLLECTION****1.1 Project Co Fees Charged to Public****(a) HMQ authorizes Project Co to:**

- (i) collect from the public the fees set out, as of July 1, 2012, in paragraphs 1, 3, 4, 5 and 6 inclusive of subsection 26(1) of Ontario Regulation 340/94 made under the *Highway Traffic Act* (Ontario) for the purposes set out in such paragraphs, subject to subsections 26(2), (3), (4) and (5) of Ontario Regulation 340/94, and to retain all of such fees, subject to the provisions of Schedule 20 – Payment Mechanism;
- (ii) collect from the public the fee set out, as of July 1, 2012, in paragraph 12 of subsection 26(1) of Ontario Regulation 340/94 made under the *Highway Traffic Act* (Ontario) as instructed in the Policy Manuals and in accordance with subsection 26(1.0.2) of Ontario Regulation 340/94 made under the *Highway Traffic Act* (Ontario); and  
  
to retain all of the Licensing Fees, other than the HMQ Licensing Fee (as defined in Section 1.5(a) of this Schedule 35 – Fee Collection);
- (iii) collect from the public the fees set out, as of July 1, 2012, in paragraphs 1, 1.1 and 2 of subsection 8(1) of Ontario Regulation 473/07 made under the *Highway Traffic Act* (Ontario) for the purposes set out in such paragraphs, and to retain all of such fees, subject to the provisions of Schedule 20 – Payment Mechanism;
- (iv) collect from the public the fees set out, as of September 21, 2012, in subsection 1.3(7) of Ontario Regulation 424/97 made under the *Highway Traffic Act* (Ontario) for the purposes set out in such paragraphs, and to retain all of such fees, subject to the provisions of Schedule 20 – Payment Mechanism; and
- (v) establish and collect from the public prices in respect of the sale of driver handbooks, including The Official Air Brake Handbook, The Official Bus Handbook, The Official Driver's Handbook, The Official Motorcycle Handbook and The Official Truck Handbook, and to retain all of such prices.

**1.2 Taxes**

- (a) If any Taxes are exigible under Applicable Laws in respect of any of the Project Operations performed by Project Co or on any amounts payable to or collectible by Project Co, Project Co shall also collect and remit such Taxes in accordance with such Applicable Laws. Project Co shall indemnify and save harmless HMQ and the officers, employees and agents of HMQ and those for whom HMQ is in law responsible from and against any such Taxes that Project Co fails to collect and remit in accordance with this Section 1.2.

**1.3 Payment in Name of Project Co**

- (a) Unless otherwise provided in this Agreement, all fees or amounts payable by the public to Project Co that are referred to in Section 1.1 or in respect of the Discretionary Services shall be collected and received by Project Co in its own name and not in the name of, or on behalf of, HMQ.
- (b) Project Co shall enter into an agreement with Desjardin Card Services, or any payment card acquiring bank as specified by HMQ, for the collection of fees and amounts payable by the public to Project Co that are referred to in Section 1.1.

**1.4 Motor Vehicle Accident Claims Fund Fees**

- (a) For the purposes of this Schedule 35 – Fee Collection, the term “MVAC Fee” means such fee as may be prescribed from time to time by the Lieutenant Governor in Council pursuant to subsection 2(2) of the *Motor Vehicle Accident Claims Act* (Ontario).
- (b) Concurrently with the collection from the public of the Licensing Fee in the circumstances referred to in Section 1.1(a)(ii), Project Co shall also collect the MVAC Fee from the individual by whom the Licensing Fee is payable.
- (c) Project Co shall hold all MVAC Fees collected by Project Co from the public in trust for HMQ and shall pay over such MVAC Fees collected during the preceding Contract Month to HMQ or to a payee identified by HMQ within 10 Business Days of the end of each Contract Month following the Commencement Date or at such other time and in the manner specified by HMQ from time to time. Project Co shall perform its obligations in this Section 1.4 in respect of MVAC Fees without charge or cost to HMQ or the public.
- (d) All MVAC Fees are non-refundable.

**1.5 HMQ Licensing Fees**

- (a) For the purposes of this Schedule 35 – Fee Collection, the term “HMQ Licensing Fee” means the fee set out in paragraph 12 of subsection 26(1) of Ontario Regulation 340/94 made under the *Highway Traffic Act* (Ontario), less an amount of \$[REDACTED].
- (b) Project Co shall collect the HMQ Licensing Fee from the individual by whom it is payable.
- (c) Project Co shall hold all HMQ Licensing Fees collected by Project Co from the public in trust for HMQ and shall pay over such HMQ Licensing Fees collected during the preceding Contract Month to HMQ or to a payee identified by HMQ within 10 Business Days of the end of each Contract Month commencing within 10 Business Days of the end of each Contract Month following the Commencement Date or at such other time and in the manner specified by HMQ from time to time. Project Co shall perform its obligations in this Section 1.5 in respect of the HMQ Licensing Fees without charge or cost to HMQ or the public.

**1.6 Unearned Revenues**

- (a) Pre-Commencement Date Unearned Revenues

- (i) Project Co acknowledges that HMQ has retained Unearned Revenues paid in respect of the DE Services prior to the Commencement Date (the “**Pre-Commencement Date Unearned Revenue**”) and that Project Co, for the First Six Year Period, shall have the obligation to deliver the DE Services in respect of which the Pre-Commencement Date Unearned Revenue relates. Project Co shall, as part of each Compliance Report it delivers to HMQ in accordance with the provisions of Schedule 14 – Reporting Obligations, provide details of the DE Services rendered during each Contract Month that have been delivered in respect of the Pre-Commencement Date Unearned Revenue.
- (ii) HMQ shall pay to Project Co within 10 Business Days of the receipt of a Compliance Report the undisputed portion of any Pre-Commencement Date Unearned Revenue to which any DE Services delivered by Project Co relate in the Contract Month that is the subject of that Compliance Report.
- (iii) If HMQ disputes the amount of any Pre-Commencement Date Unearned Revenues claimed by Project Co pursuant to any Compliance Report, HMQ shall have the right to withhold payment of the disputed portion of any Pre-Commencement Date Unearned Revenue and may refer such Dispute for resolution in accordance with Article 58 of the Project Agreement and Schedule 27 – Dispute Resolution.
- (iv) Project Co acknowledges and agrees that:
  - (A) its sole right to be paid any portion of the Pre-Commencement Date Unearned Revenues will be based upon delivery by Project Co of the DE Services to which the Pre-Commencement Date Unearned Revenues relate and that during the Project Term any Pre-Commencement Date Unearned Revenues that have been held for a period of more than 6 years from the date first paid by a person in respect of requested DE Services shall be realized as revenue by HMQ and be deducted from the aggregate of all Pre-Commencement Date Unearned Revenue then outstanding; and
  - (B) any adjustments to the Monthly Concession Payment to be made by Project Co in respect of the Pre-Commencement Date Unearned Revenue shall be made pursuant Part B, Section 2 of Schedule 20 – Payment Mechanism and shall be based on the applicable rates that were then in effect with respect to the DE Services at the time the amount of the Pre-Commencement Date Unearned Revenue was first paid by a person for the DE Services and not at the rates in effect after the Commencement Date, notwithstanding the fact that the fees to be charged by Project Co in respect of the DE Services may be greater on the date that such DE Services are delivered by Project Co than such fees were when first paid by the applicable person and collected as part of the Pre-Commencement Date Unearned Revenue.

- (v) For the purposes of this Section 1.6 of Schedule 35, the term “**First Six Year Period**” means the period commencing on the Commencement Date and ending on the day preceding the 6<sup>th</sup> anniversary of the Commencement Date;
- (b) **Unearned Revenues as at the Termination Date**
  - (i) By no later than the 10<sup>th</sup> day following the Termination Date or the Expiry Date, as applicable, Project Co shall pay to HMQ an amount equal of the balance of all of the Unearned Revenues as at the Termination Date.
  - (ii) If HMQ disputes the amount of the Unearned Revenues paid by Project Co to HMQ at any time, HMQ may refer such Dispute for resolution in accordance with Article 58 of the Project Agreement and Schedule 27 – Dispute Resolution.

## 1.7 Refunds

### (a) Refunds for Pre-Commencement Date DE Services

- (i) HMQ shall have the right, from time to time, to establish a policy with respect to (a) refunds relating to DE Services for an individual who requested or presented himself or herself during the six (6)-year period preceding the Commencement Date for DE Services (the “**Pre-Commencement Date DE Services**”), (b) fees paid by an applicant for Pre-Commencement Date DE Services that were not delivered and (c) the unexpired value of the Licensing Fee in six (6)-month increments in respect of a surrendered Original Driver’s Licence (for the avoidance of doubt, not including a suspended Driver’s Licence) that was issued during the six (6)-year period preceding the Commencement Date. Project Co shall process and issue such refunds during the Project Term as and when required by HMQ. HMQ shall reimburse the Project Co for the amount of such refunds issued by the Project Co within sixty (60) days after the date of receipt by HMQ of notice from the Project Co setting out the amount to be reimbursed in such form, with such frequency and within such periods of time as HMQ, acting reasonably, requests from time to time. If HMQ disputes the amount of the refunds, then any undisputed amounts shall be paid in accordance with this Section 1.7(a)(i) and HMQ may refer the disputed amounts for resolution in accordance with Article 58. If HMQ refers such dispute and as a result of the resolution of such dispute there remains an outstanding amount owing to the Project Co, HMQ shall pay such amount to the Project Co within thirty (30) days after the date on which the dispute is resolved.

### (b) Payment of Refunds after the Termination Date

- (i) After the Termination Date, HMQ shall be responsible for the issuance of the refunds referred to in Section 2.3 of Part 2 of Schedule 15 – DE Output Specifications and the processing of such refunds. Project Co shall estimate the value of such refunds (the “**Post-Termination DE Service Refund Amount**”) and, to the extent such amount was not included in the Project Co Unearned Revenues paid to HMQ pursuant to Section 1.6(b) of this Schedule 35, Project shall pay such amount to HMQ by the Termination Date.

**SCHEDULE 36**

**BUSINESS INTEGRITY AND FRAUD MANAGEMENT**

**[REDACTED]**

For Information Purposes Only



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**SCHEDULE 37****PERFORMANCE LETTER OF CREDIT****1. Definitions**

The following terms shall have the following meanings:

- (a) **“Performance Amount”** means \$[REDACTED].
- (b) **“Performance Letter of Credit”** has the meaning given in Section 2(a) of this Schedule 37.

**2. Performance Letter of Credit**

- (a) On or before the Financial Close Target Date, Project Co shall provide an irrevocable standby letter of credit (the **“Performance Letter of Credit”**) in the form attached as Appendix A to this Schedule 37 to secure the payment, fulfillment, satisfaction and discharge in full of all obligations, indebtedness and liabilities of or owing by Project Co to HMQ arising under, pursuant to or in respect of the Project Agreement.
- (b) The Performance Letter of Credit shall be issued in a principal amount equal to the Performance Amount.
- (c) If:
  - (i) Project Co fails to comply with, or defaults in the performance of, any of its obligations under the Project Agreement; or
  - (ii) any amount of money has become due and payable by Project Co to HMQ under or pursuant to the Project Agreement; or
  - (iii) HMQ receives notification that the Performance Letter of Credit will not be renewed,

then, in each case, HMQ shall be entitled to draw on the Performance Letter of Credit, in full or in such lesser amount as HMQ may deem necessary, in its sole discretion, and retain the proceeds thereof to:

- (A) remedy such failure or cure such default; and/or
- (B) satisfy in full any amount of money due and payable by Project Co to HMQ under the Project Agreement; and/or
- (C) to secure the payment, fulfillment, satisfaction and discharge in full of all obligations, indebtedness and liabilities of or owing by Project Co to HMQ arising under, pursuant to or in respect of the Project Agreement and the Ancillary Documents; and/or

- (D) reimburse HMQ for all reasonable costs (including all applicable Taxes and all legal and professional services, legal costs being on a full indemnity basis) incurred by HMQ in exercising its rights under this Schedule 37, including any relevant increased administrative expenses.
- (d) Project Co shall, within five (5) Business Days after the date of receipt of HMQ's request:
  - (i) replace the whole of the Performance Letter of Credit or any part of the Performance Letter of Credit drawn down by HMQ; or
  - (ii) enter into substitute arrangements in form and substance acceptable to HMQ, in its sole discretion,to ensure that the total amount available to HMQ remains, at all times, not less than the Performance Amount.
- (e) Project Co shall ensure that the Performance Letter of Credit and any substitute arrangement referred to in Section 2(d)(ii) of this Schedule 37 are kept in full force and effect until:
  - (i) Project Co has satisfied, fulfilled and discharged in full all obligations, indebtedness and liabilities of or owing by Project Co to HMQ arising under, pursuant to or in respect of the Project Agreement and the Ancillary Documents, as determined by HMQ in its sole discretion; and
  - (ii) the expiry of a period of twelve (12) months after the Termination Date.For certainty, if the Performance Letter of Credit is held to be vitiated or otherwise ceases to be in full force and effect or ceases to be in material compliance with the requirements set out in this Schedule 37, Project Co shall be in breach of its obligations set forth in this Section 2(e).
- (f) HMQ shall return the Performance Letter of Credit or the undrawn portion thereof, as applicable, to Project Co and release to Project Co any substitute arrangement referred to in Section 2(d)(ii) of this Schedule when both of the conditions set forth in Section 2(e) of this Schedule 37 have been satisfied.

### **3. Maximum Aggregate Liability of Project Co**

- (a) Notwithstanding any provision to the contrary elsewhere in the Project Agreement, the maximum aggregate liability of Project Co to HMQ as set forth in Section 57.4 of the Project Agreement shall not be subject to, reduced by, or take into consideration, any drawdown made by HMQ under the Performance Letter of Credit.

### **4. Dispute**

- (a) HMQ shall be entitled to exercise its rights under Section 2(c) of this Schedule 37 notwithstanding the application of Section 34.2 of the Project Agreement or Section 58 of the

Project Agreement to any Dispute, and notwithstanding any provision to the contrary elsewhere in the Project Agreement.

For Information Purposes Only

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**APPENDIX A**  
**PERFORMANCE LETTER OF CREDIT**

*[NTD: The Performance Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]*

Letter of Credit: #[●]

Date: [●]

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
as represented by the Minister of Transportation  
Service Delivery Partnership Branch  
1201 Wilson Avenue  
Building B, 3<sup>rd</sup> Floor  
Downsview, Ontario  
M3M 1J8

Attn: [●]

Dear Sir/Madam:

**RE: Driver Examination Services**

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At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of \$[REDACTED] (the “**Stated Amount**”) to secure performance of the obligations of Project Co under that certain project agreement dated [●] between HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Transportation (“**HMQ**”) and Project Co (as amended from time to time, the “**Project Agreement**”).

The amount available under this Letter of Credit is payable to HMQ, at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two authorized signing officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 2(c) of Schedule 37 to the Project Agreement and (b) presentation of the original of this Letter of Credit.

This Letter of Credit shall be effective upon its issuance and shall expire at 4:45 p.m. on [insert date being one (1) year from date of issuance] (the “**LC Expiry Date**”), and HMQ may call for payment of any amount outstanding under this Letter of Credit at any time up to 4:45 p.m. on the LC Expiry Date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be deemed to be automatically extended, from year to year, for additional individual periods of one year starting on the LC Expiry Date or from any future expiry date up to but not beyond (i) August 31, 2024, (ii) the date on which the amount of this Letter of

Credit is reduced to zero by HMQ's drawings hereunder, or (iii) the date on which this Letter of Credit (together with any applicable amendment thereof) has been returned to us together with irrevocable instructions from you to cancel or reduce this Letter of Credit in accordance with the provisions of the Project Agreement (the "**Final Expiry Date**"), unless, at least sixty (60) days prior to the LC Expiry Date or any subsequent expiry date (excluding the Final Expiry Date), we have notified you by special courier in writing that we elect not to consider this Letter of Credit extended for any such additional period. Upon receipt by you of such notice, you may draw the full amount remaining available hereunder by means of your demand.

Partial drawings are permitted. Each drawing paid hereunder shall permanently reduce the Stated Amount by the amount of such drawing.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the "**UCP**") with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the LC Expiry Date or any subsequent expiry date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

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

Name:

Title:

By:

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

Title:

For Information Purposes Only